

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

76-1335

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B
Pgs

UNITED STATES OF AMERICA,

Appellee,

-against-

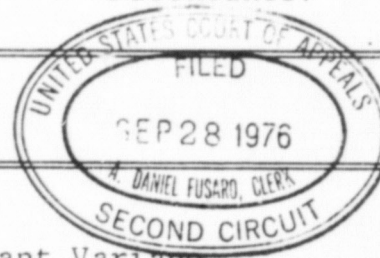
MICHAEL DEMICHAELS, PETER VARIANO, LAWRENCE CENTORE,
JOHN MONACO, MICHAEL PICCIANO, MICHAEL EVANGELISTA,
ANTHONY RUSSELLO, and HENRY BUCCI,

Defendants-Appellants.

JAMES OSTRANDER, ALFONSO COLETTI, MICHAEL YANNICELLI,
WILLIAM MURTY, and FRANK GALLELLA,

Defendants.

JOINT APPENDIX



IRVING ANOLIK

Attorney for Defendant-Appellant Variano
225 Broadway, New York, N.Y. 10007-(212) 732-3050

PAUL A. VICTOR

Attorney for Defendant-Appellant Evangelista
67 Wall Street, New York, N.Y. 10005-(212) 943-0880

EDWARD PANZER

Attorney for Defendant-Appellant DeMichaels
299 Broadway, Suite 605, New York, N.Y. 10007-(212) 349-6128

BERNARD ALAN SEIDLER

Attorney for Defendant-Appellant Russello
401 Broadway, New York, N.Y. 10013-(212) 226-1795

PAUL J. CURRAN

United States Attorney
Attorney for Appellee
(5744) U.S. Courthouse, Foley Square, New York, N.Y.

PAGINATION AS IN ORIGINAL COPY

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A-1

DOCKET ENTRIES

MAJOR OFFENSE MO
MINOR OFFENSE MIS

0857

MONACO, JOHN

04 14

76

0377

FELONY Fel X 0208

FIRST FIRST MIDDLE

JUVENILE 13

| | | |
|---|--|---------------------------|
| U.S. TITLE/SECTION 18:371 18:1955 | OFFENSES CHARGED Consp. to gamble. Gambling. | ORIGINAL COUNTS 1 2 |
|---|--|---------------------------|

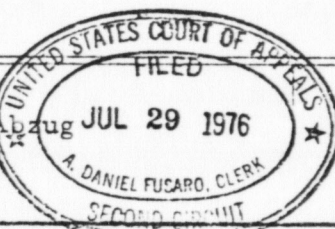
7/9

| | | | |
|--|--|---------------------------------|-------------------|
| II. KEY DATES & INTERVALS | | SUPERSEDING COUNTS | |
| ARREST or U.S. Custody Began 4-14-76 | INDICTMENT X Information 4-14-76 | ARRAIGNMENT Trial Set For | TRIAL Vot Dire |
| Summons Served | Indict Waived | 1st Plea | Trial Begun |
| First Appearance | In Charging District | 2nd Plea | Trial Ended |
| | Superseding Indictment X 76 Cr 141 | 1st Plea N3 G NOL | |
| | | 2nd Plea G Plea I/W/Drawn | |
| | | 3rd Plea N3 G NOL | |

| | |
|------------------------|------------------|
| Disposition of Charges | SENTENC |
| Convicted | On All Cr |
| Acquitted | On Life |
| Dismissed | On Govt's Motion |

| | | | | | | |
|------------------------|--------|------|------------|-------------------------|------------|--|
| Search Warrant | Issued | DATE | INITIAL/NO | MAGISTRATE | INITIAL/NO | OUTCOME |
| Summons | Issued | | | PRELIMINARY EXAMINATION | | HELD FOR GOV OR OTHER PROCEEDING IN THIS DISTRICT |
| Arrest Warrant | Served | | | REMOVAL OR HEARING | | HELD FOR GOV OR OTHER PROCEEDING IN DISTRICT OF CO |
| COMPLAINT | | | | WAIVED | | |
| OFFENSE (In Complaint) | | | | NOT WAIVED | | |
| | | | | INTERVENING INDICTMENT | | |

U.S. Attorney or Asst.

Michael Abzug
791-1162

ATTORNEYS

Armand Lesser
475 5th Avenue
New York, N.Y. 10017 685-7908

Defense [] GJA [] Ret [] Waived [] Sett [] None [] Other []

Centore, et al.

| DATE | DOCUMENT NO. | PROCEEDINGS | EXCLUDABLE DELAY |
|---------|--------------|---|------------------|
| 4-14-76 | | Filed indictment. | |
| 4-26-76 | | Case assigned to Judge Carter superseding 76 Cr 141. | |
| 4-27-76 | | Suppression hearing begun and concluded on motion to suppress. Decision reserved until tomorrow. Trial to begin April 27, 1976 at 10 A.M. CARTER, J. | |
| 4-28-76 | | Motion Denied.....CARTER, J. | |
| 5-3-76 | | Def't pleads NOT GUILTY. Bail fixed on Indictment 76 CR 141 is to be cont'd on this Indictment....CARTER, J. | |
| 5-4-76 | | TRIAL began and continued. | |
| 5-5-76 | | TRIAL continued. | |
| 5-6-76 | | Pld Sealed Envelope to be sealed or unsealed only at the direction of Judge Carter or another Fed Jui...For use of Appellate Ct if desired...Carter, J. | |
| 5-7-76 | | (FIXED IN CANTER VOLT) | |
| 5-8-76 | | TRIAL cont'd | |
| 5-9-76 | | TRIAL cont'd | |
| 5-10-76 | | TRIAL Cont'd | |
| 5-11-76 | | TRIAL cont'd | |
| 5-12-76 | | TRIAL cont'd | |

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GOVERNMENT REQUEST Def't moves to dismiss the indictment
The motion of the def't to dismiss CT 1 of this indictment is Granted

for the reasons indicated on the record. The case will go to the jury on Ct 2

TRIAL cont'd

TRIAL cont'd & concluded. JURY VERDICT. DEPT GUILTY. Pre-sentence reports ordered sentence adj to June 15, 1976 at 9:30 A.M. in court room 318. Bail cont'd at \$10,000 P.R.B...Carter, J.

Filed order that the aforesaid 47 reels of tape & toll records be sealed & transferred into the custody of the Westchester County District Attorney's Office..Carter, J. M/N

Fld order that notices fld on 4-16- & 4-20-, 1976 declaring the deft Peter Variano eligible for treatment as a dangerous special offender be unsealed on May 24, 1976 ...Briant, J. M/N

Filed govt's memorandum of law (docketed 6-2-76)

Deft (atty present) Filed JUDGMENT & COMMITMENT The deft is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THIRTY (30) DAYS on ct 2 The deft is placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. Bail Pending Appeal is fixed at \$10,000 Personal R^d cognizance Bond....Carter, J.
issued copies

Filed notice of appeal from judgment filed 7-8-76 (unfiled copy
of appeal to debt)

[illegible]

DOCKET ENTRIES

| | | | | |
|--|----------------|--|-------------|--|
| PARTY OFFENSE NO CHARGE OFFENSE NO CHARGE OFFENSE NO CHARGE OFFENSE NO | 0857 0208 1 | VARIANO, PETER | 04 14 13 | 76 0377 |
| 18:371 18:1955 | | Comp. to gamble. Gambling. | | 7/8 |
| II. KEY DATES & INTERVALS | | | | |
| ARREST OF U.S. Custody Began 4-14-76 Summons Served First Appearance | | INDICTMENT Information 4-14-76 Indict Waived Superseding Indictment 76 Cr 141 | | TRIAL Trial Set For 1st Plea Final Plea |
| High Risk Date In Charging District | | ARRANGEMENT Trial Set For 1st Plea Final Plea | | TRIAL Trial Set For 1st Plea Final Plea |
| SUPERSEDING COUNTS | | | | |
| SENTENCE Disposition of Counts Convicted Acquitted Dismissed On Government's Motion | | | | |
| MAGISTRATE | | | | |
| Search Warrant Issued Return Summons Issued Served Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint) | | DATE INITIAL NO. INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION REMOVAL HEARING WAIVED NOT WAIVED INTERVENING INDICTMENT | | |

U.S. Attorney or Agent

 Michael Abzug
 791-1162

 ATTORNEYS
 PATRICK F. BRODERICK
 BRODERICK & BRODERICK
 38-08 Bell Boulevard
 Bayside, N.Y. 11361 229-6070

* Show last names and suffix numbers of other defendants in same indictment information.

| DATE | DOCUMENT NO. | PROCEEDINGS | EXCLUDABLE DEL. |
|---------|---|-------------|-----------------|
| | | | (a) (b) |
| 4-14-76 | Filed indictment. | | |
| | Case assigned to Judge Carter superseding 76 Cr 141. | | |
| 4-26-76 | Minimization hearing begun and concluded. Motions denied. Trial to begin April 27, 1976 at 10 A.M. CARTER, J. | | |
| 4-27-76 | Def't pleads NOT GUILTY. Bail fixed on Indictment 76 CR 141 is to be cont'd on this Indictment. CARTER, J. | | |
| | TRIAL began and continued. | | |
| 4-28-76 | TRIAL cont'd. | | |
| 5-3-76 | Old Sealed Envelope to be sealed or unsealed only at the direction of Judge Carter or another Fed Judge.. For use of Appellate Court if desired.. Carter, (placed in CARTER 141) | | |
| 4-29-76 | TRIAL cont'd | | |
| 4-30-76 | TRIAL cont'd | | |
| 5-3-76 | TRIAL cont'd | | |
| 5-7-76 | TRIAL cont'd | | |
| 5-10-76 | TRIAL cont'd GOVERNMENT RESTS. Def't moves to dismiss the indictment. The motion of the def't to dismiss CT 1 of this indictment is granted. for the reasons indicated on the record. The case will go to the jury on CT 2. | | |
| 5-6-76 | TRIAL cont'd | | |

DOCKET ENTRIES

| DATE | PROCEEDINGS | PAGE | EXHIBIT | REMARKS |
|---------|---|------|---------|---------|
| 5-7-76 | TRIAL cont'd & concluded. JURY VERDICT. DEFT GUILTY. Pre-sentence Reports Ordered. Sentence adj to June 18, 1976 at 9:30 A.M. in court room 318. Bail cont'd at \$10,000. B.M.Carter, J | | | |
| 5-14-76 | Filed order that the aforesaid 47 reels of tape & full transcript be sealed & transferred back into the custody of the Warrington County District Attorney's Office....Carter, J. M/W | | | |
| 5-25-76 | FLD order that notices fld on 4-16- & 4-20, 1976 declaring the deft Peter Variano eligible for treatment as a dangerous special offender be unsealed on May 24, 1976..Brieant, J. M/W | | | |
| 6-2-76 | Filed govt's affid inresponse to Peter Varianos motion for new trial | | | |
| 6-7-76 | Filed deft's Affid. & notice of motion for an order granting a new trial under rule 33 of the Federal Rules of Criminal Procedure ret 6-15-76 | | | |
| 6-17-76 | Filed govt's affid. for writ of habeas corpus ad testificandum Writ issued ret 7-8-76 | | | |
| 7-8-76 | DEFT (atty present) Filed JUDGMENT & COMMITMENT The deft is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on ct 2 The deft is fined \$20,000 dollars to be paid or the deft is to stand committed. Bail Pending Appeal is fixed at \$10,000 Personal Recognizance Bond.....Carter, J. Issued copies | | | |
| 7-8-76 | Filed notice of appeal from judgment ent 7-8-76 (copy to U.S. atty mailed copy re deft.) | | | |
| 6-14-76 | <i>Filed notice of appeal of deft. Peter Variano</i> | | | |
| 6-14-76 | <i>Filed notice of motion</i> | | | |
| 6-14-76 | <i>Filed affidavit for writ of Habeas Corpus ad Testificandum</i> | | | |

A-5

DOCKET ENTRIES

| | | | | |
|---|----------------|---|---------------|---|
| MINOR OFFENSE AND PROBATIONANCE AND FELONY FEL | 0857 0208 1 | RUSSILLO, ANTHONY | 04 14 76 0377 | 13 |
| U.S. TITLE/SECTION 18:371 18:1955 | | OFFENSES CHARGED Consp. to gamble. Gambling. | | ORIGINAL COUNTS 1 2 |
| II. KEY DATES & INTERVALS | | | | |
| ARREST or U.S. Custody Began 4-14-76 Summons Served First Appearance | | INDICTMENT X High Risk Date Information 4-14-76 Indict. Waived In Charging District 76 Cr 141 | | ARRAIGNMENT Trial Set For 1st Plea Final Plea |
| | | TRIAL Ver. Dire Trial Began Trial Ended | | SUPERSEDING COUNTS SENTENCE Disposition of Charges Convicted Acquitted Dismissed |
| MAGISTRATE | | | | |
| Search Warrant Issued Return Summons Issued Served Arrest Warrant Issued COMPLAINT OFFENSE (In Complaint) | | DATE INITIAL NO. INITIAL APPEARANCE DATE PRELIMINARY EXAMINATION OR REMOVAL HEARING WAIVED NOT WAIVED ENTERING INDICTMENT Tap Number | | |
| U.S. Attorney or Asst. Michael Abzug 791-1162 | | ATTORNEYS BERNARD ALAN SEIDLER 401 Broadway Suite 604 New York, N.Y. 10013 226-1795 | | |

* Show last names and birth numbers of other defendants on same indictment information

Centore, et al.

| DATE | DOCUMENT NO. | PROCEEDINGS | EXCLUDABLE DELAY |
|---------|---|-------------|------------------|
| 4-14-76 | Filed indictment. | | (1) (2) (3) |
| 4-27-76 | Case assigned to Judge Carter superseding 76 Cr 141. | | |
| 4-28-76 | Def't pleads NOT GUILTY. Bail fixed on Indictment 76 CR 141 is to be cont'd on this Indictment....CARTER, J. | | |
| 4-28-76 | TRIAL began and continued. | | |
| 5-3-76 | TRIAL cont'd. | | |
| 5-3-76 | File Sealed Envelope to be sealed or unsealed at the direction of Judge Carter or another Fed Jdg...For use of Appellate Ct if desired....Carter, J. (PLACED IN CRIMINAL UNIT) | | |
| 4-29-76 | TRIAL cont'd | | |
| 4-30-76 | TRIAL cont'd | | |
| 5-3-76 | TRIAL cont'd | | |
| 5-4-76 | TRIAL cont'd | | |

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DOCKET ENTRIES

Deputy Clerk

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INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :

- v - :

LAWRENCE CENTORE, a/k/a "Larry Black," :
MICHAEL YANNICELLI, PETER VARIANO, :
MICHAEL EVANGELISTA, WILLIAM MURTY, :
JAMES OSTRANDER, JOHN MONACO, :
MICHAEL PICCIANO, MICHAEL DeMICHAELS, :
FRANK GALELLA, ANTHONY RUSSILLO, :
ALFONSO COLETTI, and HENRY BUCCI, :

INDICTMENT

S 76 Cr.

Defendants. :

----- x
COUNT ONE

The Grand Jury charges:

1. From on or about September 1, 1968, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, LAWRENCE CENTORE, a/k/a "Larry Black", MICHAEL YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA, WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO, MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA, ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI, the defendants, and Francis J. Millow, Angelina David and Morgan Davis, named hereir as co-conspirators but not as defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree, together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

INDICTMENT

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2. It was part of said conspiracy that said defendants would unlawfully, wilfully and knowingly, conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race hourse policy business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) being and remaining in substantially continuous operation for a period in excess of thirty days and have a gross revenue of two thousand dollars in a single day.

3. Among the means whereby the defendants carried out the conspiracy were the following:

a. The defendant MICHAEL YANNICELLI, together with the defendants LAWRENCE CENTORE, a/k/a "Larry Black", and PETER VARIANO, controlled, directed, managed, and supervised the illegal gambling business, which operated at various locations around North Tarrytown, Yonkers, Hastings-on-Hudson, Tuckahoe, Eastchester, lower New Rochelle, and upper Bronx County.

b. The defendant MICHAEL EVANGELISTA, operated, conducted and managed a wireroom in the premises of 929 East 213th Street, Bronx, New York.

c. The defendant ALFONSO COLETTI, operated, conducted and managed a wireroom in the premises of Al's Stationery Store, 95 Beekman Avenue, North Tarrytown, New York.

d. Francis J. Millow, named herein as a co-conspirator but not as a defendant, operated, conducted, and managed a wireroom in the premises of 25 Cedar Street, North Tarrytown, New York.

e. The wirerooms, including those specified herein, cooperated with and assisted each other in the operation of the illegal gambling business by:

INDICTMENT

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(i) Accepting sports and mutuel race horse policy wagers from individual bettors not named herein who would telephone the various wirerooms to place their bets;

(ii) Exchanging information concerning current odds (commonly known as the "line") on sporting events;

(iii) Relaying and advising each other of recent betting results including the daily winning policy number.

(iv) Placing and receiving large wagers with each other so that no single wireroom would be exposed to a large loss (commonly known as "laying off");

(v) Reviewing amounts of money owed to or by bettors or other participants in the illegal gambling business (commonly known as the "play and collects") as a result of their betting activity.

f. In addition to telephoning various wirerooms to place their bets, individual bettors in Bronx and Westchester Counties also placed wagers with runners. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, ANTHONY RUSSILLO, and Francis J. Millow, named as a co-conspirator but not as a defendant, together and with others not named herein, collected wagers from individual bettors six days a week at various locations in Bronx and Westchester Counties, including Galella's Barber Shop, 25 Main Street, Tarrytown, New York, Green Tavern Restaurant, 14 Main Street, Hastings-on-Hudson, New York, and the Headless Horseman Sports Center, 66 Beekman Avenue, North Tarrytown, New York. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, and ANTHONY RUSSILLO, together with Francis J. Millow, named herein as a co-conspirator but not as a defendant, and with others not named herein, would, on a weekly basis, collect the losses from and pay the winnings to individual bettors.

INDICTMENT

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g. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, WILLIAM MURTY, and others not named herein, would collect the betting slips accumulated by the runners in the gambling business at various locations in the Bronx and Westchester Counties. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, and WILLIAM MURTY would meet at various locations in Bronx County, including the vicinity of the intersection of Bronx Boulevard at 239th Street, Bronx, New York, to facilitate the transfer of the accumulated betting slips to a central location, commonly known as a "bank", where the betting slips for each runner would be examined to determine (1) the total amount of wagers placed with the runner, (2) his commission based upon 30% of the total amount of wagers which he collected, (3) the number of winning wagers received as well as the gross amount wagered in the entire operation, and (4) the net profit or loss to the defendants MICHAEL YANNICELLI and PETER VARIANO after the winning wagers, commissions and rents for the various wirerooms were paid.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed, among others, the following overt acts in the Southern District of New York:

1. In or around December, 1968, the defendant LAWRENCE CENTORE spoke to a co-conspirator whose identity is known to the grand jury in the vicinity of Bruno's Restaurant, Yonkers, New York.
2. In or around March, 1969, the defendant LAWRENCE CENTORE spoke to the defendant MICHAEL YANNICELLI.
3. In or around August, 1971, the defendant LAWRENCE CENTORE met a co-conspirator whose identity is known to the grand jury at approximately 9:00 a.m., in Yonkers, New York.

INDICTMENT

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4. In or around March, 1971, the defendant PETER VARIANO met with co-conspirator Francis J. Millow at the Green Tavern, 14 Main Street, Hastings-on-Hudson, New York.

5. In or around May, 1974, the defendants MICHAEL YANNICELLI and PETER VARIANO met with co-conspirator Francis J. Millow in Hastings-on-Hudson, New York.

6. In or around August of 1973, the defendants HENRY BUCCI and PETER VARIANO met with co-conspirator Francis J. Millow at the Sleepy Hollow High School, North Tarrytown, New York.

7. On or about October 20, 1974, the defendant HENRY BUCCI met with co-conspirator Francis J. Millow at approximately 1:00 p.m.

8. On or about December 12, 1974, the defendant MICHAEL EVANGELISTA gave the defendant MICHAEL PICCIANO an envelope in the immediate vicinity of 239th Street and Bronx Boulevard, Bronx, New York.

9. On or about December 16, 1974, the defendant MICHAEL EVANGELISTA gave the defendant WILLIAM MURTY an envelope in the immediate vicinity of 949 East 214 Street, Bronx, New York.

10. On or about December 18, 1974, the defendants WILLIAM MURTY, MICHAEL PICCIANO and JAMES OSTRANDER met in the immediate vicinity of Bronx Boulevard and 239th Street, Bronx, New York.

11. In or around December, 1974, the defendant JOHN MONACO introduced the defendant WILLIAM MURTY to Christine Romeo.

12. On or about December 21, 1974, the defendant JOHN MONACO handed the defendant JAMES OSTRANDER at least five envelopes in Bronx County, New York.

13. On or about December 31, 1974, the defendant MICHAEL EVANGELISTA entered the premises of 929 East 213th Street, Bronx, New York.

INDICTMENT

14. In or around May, 1972, the defendant MICHAEL DeMICHAELS met in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.

15. In or around July, 1972, the defendant MICHAEL DeMICHAELS had a conversation in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.

16. On or about November 13, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.

17. On or about December 7, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.

18. On or about November 22, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.

19. On or about December 4, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.

20. On or about November 14, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.

21. On or about November 28, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

From on or about April 15, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, LAWRENCE CENTORE, a/k/a "Larry Black," MICHAEL YANNICELLI, PLTER VARIANO, MICHAEL EVANGELISTA, WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO, MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA, ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI, the defendants, unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York,

INDICTMENT

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to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and ^{run} ~~won~~ a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of thirty days, and having a gross revenue of two thousand dollars in a single day.

(Title 18, United States Code, Sections 1955 and 2.)

Foreman

ROBERT B. FISKE, Jr.
United States Attorney

DEFENDANT MICHAEL EVANGELISTA'S NOTICE
OF MOTION TO VACATE EAVESDROPPING ORDERS
AND SEARCH WARRANTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

LAWRENCE CENTORE, a/k/a "Larry Black",
MICHAEL YANNICELLI, PETER VARINO,
MICHAEL EVANGELISTA, WILLIAM MURTY,
JAMES OSTRANDER, JOHN MONACO, MICHAEL
PICCIANO, MICHAEL DeMICHAELS, FRANK
GALELLA, ANTHONY RUSSILLO, ALFONSO
COLETTI and HENRY BUCCI,

Defendants.

Indictment
75 Cr. 141

NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of
PAUL A. VICTOR, sworn to the 18th day of March, 1976, the indictment
herein and all the proceedings heretofore had herein, the undersigned,
in behalf of the defendant, MICHAEL EVANGELISTA, will apply to this
Court, before the Honorable Robert L. Carter, United States District
Judge for the Southern District of New York, at the United States
Courthouse at Foley Square, New York, New York, on the 30th day of
March, 1976, at 10:00 A.M., or as soon thereafter as counsel can be
heard for an order:

(1) Controverting, vacating and set aside all eavesdropping
orders and search warrants issued herein and suppressing the evidence
obtained and seized thereby, or in the alternative granting a hearing
to inquire into the legality of the issuance of said warrants and orders
and the acquisition of evidence obtained thereby.

DEFENDANT MICHAEL EVANGELISTA'S NOTICE
OF MOTION TO VACATE EAVESDROPPING ORDERS
AND SEARCH WARRANTS

(2) Permitting defendant, MICHAEL EVANGELISTA to adopt all motions made by counsel for other defendants relating to the validity of the indictment and the issuance of eavesdropping orders and search warrants;

(3) granting a severance and/or other relief from the government's improper merger of defendants and offenses and

(4) such other and further relief as to this Court may seem just and proper in the premises.

Dated: New York, New York
March 18, 1976

Yours, etc.,

PAUL A. VICTOR of
Dublirer, Haydon & Straci
Attorneys for Defendant EVANGELISTA
Office & P.O. Address
67 Wall Street
New York, New York 10005
[212] 943-0880

TO:
United States Attorney
for the Southern District
One St. Andrews Plaza
New York, New York

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

LAWRENCE CENTORE, a/k/a "Larry Black",
MICHAEL YANNICELLI, PETER VARINO,
MICHAEL EVANGELISTA, WILLIAM MURTY,
JAMES OSTRANDER, JOHN MONACO, MICHAEL
PICCIANO, MICHAEL DeMICHAELS, FRANK
CALELLA, ANTHONY RUSSILLO, ALFONSO
COLETTI and HENRY BUCCI,

Defendants.

Indictment
75 Cr. 141

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PAUL A. VICTOR, being duly sworn, says:

1. That he is an attorney, associated with the law firm of
Dublirer, Haydon & Straci, attorneys for the defendant, MICHAEL
EVANGELISTA, and makes this affidavit in support of the within motion.

WIRE TAP ORDER

2. The wire tap orders issued herein were improper and
illegal because, inter alia:

(a) The original order dated November 8, 1974 failed to
provide for written notice to be served upon such persons whose conver-
sations were intercepted.

(b) Notice of the interception of the conversation of
defendant, MICHAEL EVANGELISTA, was never served upon him.

(c) The application for the aforesaid order failed to

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

set forth facts establishing probable cause that an offense was being committed and that communications concerning said offense would be obtained through eavesdropping and that normal investigative procedures have been tried and have failed or would be unlikely to succeed if tried, and that the person named in said order owned or leased the equipment to be monitored.

3. I have annexed hereto, as Exhibit "A" a copy of the wire tap order, dated November 8, 1974 and the supporting affidavits of District Attorney Carl Vergari, Detective Richard Spota and F.B.I. Agent Allen Lance Emory.

4. A review of the aforesaid order will demonstrate that it lacks any post-surveillance notice provision as required by Section 700.50 of the Criminal Procedure Law of the State of New York. It is respectfully submitted that the aforesaid order was therefore illegally issued and the evidence unlawfully obtained thereby tainted all other orders and proceedings based thereon. Berger v. New York, 388 U.S. 41, 60; United States v. Chun, 503 F.2d 533.

5. Moreover, apart from the fact that the eavesdropping order was improper, no effort was even made by the government to cure this infirmity by the giving of said post-surveillance notice to the defendant, MICHAEL EVANGELISTA. It should be noted in this regard that, as a result of all of the aforesaid, the defendant, MICHAEL EVANGELISTA, was arrested by the F.B.I. and New York State Officers in December of 1974* and re-arrested in February of 1976; and that despite these arrests the

*These charges were dismissed for lack of prosecution in the Criminal Court of the City of New York, County of Bronx.

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

defendant, MICHAEL EVANGELISTA, has still not yet received the required post-surveillance notice regarding the seized conversations.

6. The affidavits submitted in support of the aforesaid eavesdropping order set forth no facts to establish the necessary probable cause for the issuance thereof. The affidavits are replete with mere speculation as to observations of innocuous meetings between one Anthony Milrow and other persons and the hearsay conclusions of a confidential informant [allegedly made to F.B.I. Agents not parties to the application].

7. It is submitted therefore that the application for said eavesdropping order did not contain sufficient probable cause. [Spinelli v. United States, 394 U.S. 410]. It is respectfully requested in any event that a hearing be granted and that the said confidential informant be produced for examination.

8. The eavesdropping warrant is further invalid in that the application therefor does not set forth any facts establishing that normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed or too dangerous to employ. [See New York Criminal Procedure Law Section 700.20]. [See United States v. Kerrigan, 514 F.2d 35, 38; United States v. Kalustian ____ F.2d ____ (9th Cir. 8/5/75) digested at 17 Crim. L. Rptr 2428].

SEARCH WARRANT

9. I have annexed hereto as Exhibit "B" the search warrant dated December 31, 1974 and all affidavits submitted in support thereof.

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

10. The search warrant was illegally issued because, inter alia:

(a) the defendant, MICHAEL EVANGELISTA, was not named therein, nor in any of the papers in support thereof;

(b) the search warrant herein was based upon information obtained via unlawful and illegal eavesdropping;

(c) the affidavit in support of the search warrant set forth no underlying facts to establish probable cause that the premises, within which defendant was arrested, was used for any illegal activity.

11. The aforesaid affidavit submitted in support of the search warrant herein was sworn to and executed by one Joseph Di Sciorio "an investigator" in the employ of the Westchester County District Attorney's Office. He states that the facts as set forth in this affidavit are based upon personal knowledge and upon facts related to him by brother officers involved in the investigation. He also states that the facts known to him have resulted primarily from eavesdropping. However, nowhere within said affidavit is any specific delineation made of any specific facts known to the officer as opposed to those received from a hearsay source; and needless to say no basis whatsoever for reliability of the hearsay is set forth.

12. In any event it should be noted that out of 9 pages of sworn statements contained in said affidavit all but 2 paragraphs pertain to other persons and other premises. In the two paragraphs relating to the premises in which defendant was arrested, the affidavit states, in conclusory language only that said other persons "laid off large quantities of mutual race horse policy wagers" via a telephone call to a phone number contained within the premises herein. No underlying facts

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

supporting this conclusion are anywhere set forth.

13. In addition, the aforesaid affidavit states that the building in question is a "two family house" and that the subject phone instrument [to wit, 212-882-2087] is "located in the first floor apartment." Again no facts substantiating this conclusion are set forth in said affidavit.

14. There is no statement by the investigator to identify any records whatsoever as being in your deponent's possession or in existence at the time that the warrant was sought. The search warrant, therefore, is void on its face, as authorizing and permitting a fishing expedition, a search for papers and records, unidentified, and unidentifiable and probably not in existence at the time of the issuance of the search warrant. Certainly, no warrant permitting a search is valid when it permits a search for evidence not in being at the time of its issuance. A search warrant, in order to be valid, must specifically state and describe those items sought, so that, if and when they are found, they may be identified as the papers, records and/or articles described in the affidavit made in support of the search warrant and in the warrant itself.

15. As a result of this improper issuance of the search warrant, and the illegal arrest and unreasonable search and seizure following it, the evidence seized hereunder was seized contrary to law and in violation of defendant's constitutional rights and should be suppressed.

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

ADOPTION OF MOTIONS'

16. Upon information and belief the defendant, MICHAEL EVANGELISTA, has not yet been supplied with all supporting affidavits, notices, inventories and other papers made in connection with the issuance of the eavesdropping orders and search warrants and the execution and completion thereof.

17. Upon information and belief the aforesaid orders and warrants are further invalid due to a failure of government agents and New York authorities to comply with the sealing and minimization requirements of the New York Criminal Procedure Law.

18. Deponent has been informed that motions [addressing themselves to these and other infirmities in the said orders and indictment] will be made by counsel for co-defendants herein. Therefore, in order to avoid a multiplicity of motions, the defendant, MICHAEL EVANGELISTA hereby respectfully requests that he be granted permission to adopt all such motions by co-defendants.

SEVERANCE

19. The indictment herein is defective and prejudicial in that it combines into a single conspiracy multiple distinct and separate conspiracies, e.g., inter alia, those dealing with sports betting and others dealing with mutual race horse policy.

20. The eavesdropping and search warrants and supporting papers indicate that the unindicted co-conspirator, Francis J. Millow conducted a sports betting conspiracy with the defendant, Anthony Russillo, and a completely independent mutual race horse policy operations with other persons. [See e.g. affidavit of Joseph Di Sciorio annexed to Exhibit "B"]. The joinder of such conspiracies into a single

AFFIDAVIT OF PAUL A. VICTOR, ESQ., FOR
DEFENDANT EVANGELISTA IN SUPPORT OF MOTION

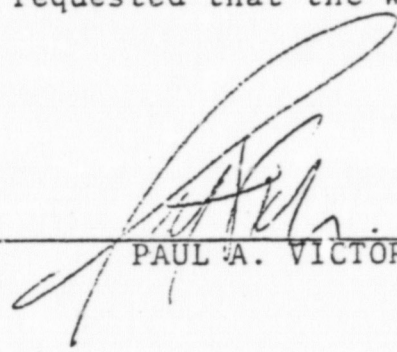
conspiracy has been held to be improper. United States v. Bertolotti,
(2nd Cir) ____ F.2d ____ decided 11/10/75; United States v. Kotteakos,
328 U.S. 750. Even if the Court determines that the defendants have
been properly joined in the proceeding, defendant appeals to the
discretion of this Court and requests a severance pursuant to Rule 14
of the Rules of Criminal Procedure, upon the ground that he will be
severely prejudiced and find it impossible to obtain a fair trial
because of the number of defendants and the complexity of the trial.

WHEREFORE, it is respectfully requested that the within motion
be granted in all respects.

Sworn to before me this
18th day of March, 1976

Marie Picone

MARIE PICONE
COMMISSIONER OF DEEDS
City of New York 3-538
Cert. Filed in Bronx Court.
Commission Expires 12/31/76



PAUL A. VICTOR

EXHIBIT A TO VICTOR AFFIDAVIT - WIRE
TAP ORDER OF NOVEMBER 8, 1974
COUNTY COURT : COUNTY OF WESTCHESTER

-----X

In the Matter
OF THE APPLICATION OF CARL A. VERGARI,
DISTRICT ATTORNEY OF WESTCHESTER COUNTY FOR
INTERCEPTING TELEPHONE COMMUNICATIONS OVER THE
INSTRUMENT BEARING THE NUMBER 914-631-2344 LISTED
IN THE RECORDS OF THE NEW YORK TELEPHONE COMPANY
TO ANTHONY J. MILLOW, 25 Cedar Street, NORTH
TARRYTOWN, NEW YORK.

-----X

It appearing from the application of Westchester County
District Attorney Carl A. Vergari and the attached affidavits of
Agent Lance Emory of the Federal Bureau of Investigation and
Richard Spota of the North Tarrytown Police Department, sworn to
before me this date, that there are reasonable grounds to believe
that evidence will be secured leading to the detection and appre-
hension of persons engaged in criminal activities; to wit:
The possession of gambling records, the promotion of illegal
gambling and criminal conspiracy, the said evidence consisting of
telephone conversations of Francis Milow and other persons over
telephone instruments bearing the number 914-631-2344, listed in
the records of the New York Telephone Company to Anthony J. Milow,
25 Cedar Street, North Tarrytown, New York.

It further appearing that there is sufficient cause for
the interception of telephone communications for a period of 30
days, 24 hours a day, and that the interception shall not
terminate automatically upon the seizure of certain of the
described conversations because they constitute a continuing
conspiracy of unknown dimensions.

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EXHIBIT A TO VICTOR AFFIDAVIT - WIRE
TAP ORDER OF NOVEMBER 8, 1974

It further appearing that the specific conversations sought to be obtained are those with unknown persons concerning the possession of gambling records, the promotion of illegal gambling and criminal conspiracy, and conversations showing the identity of co-conspirators, and

It further appearing that the conversations are not otherwise privileged; and

It further appearing that information indicating the persons engaged in the promotion of this illegal gambling, illegal possession of gambling records and criminal conspiracy, has not been determined, and

It further appearing that normal investigative procedures have thus far been unsuccessful and their continued use appears to be unlikely to succeed or to be too dangerous;

NOW, upon application of Carl A. Vergari, District Attorney of Westchester County, it is

ORDERED, that District Attorney Carl A. Vergari, or his duly authorized agents, including members of the District Attorney's Investigators, North Tarrytown and Tarrytown Police Departments and members of the Federal Bureau of Investigation are hereby authorized and empowered, pursuant to Article 700 of the Criminal Procedure Law and Chapter 119 of the United States Code, to intercept, to listen to and to make copies of certain telephone communications and wire communications over a telephone instrument bearing the number 914-631-2344 listed to Anthony J. Millow, 25 Cedar Street, North Tarrytown, New York, specifically

EXHIBIT A TO VICTOR AFFIDAVIT - WIRE
TAP ORDER OF NOVEMBER 8, 1974

those conversations of Francis Mallow over the telephone 914-631-2344 and other unknown persons, showing co-conspirators, concerning the possession of gambling records and the promotion of illegal gambling, and it is further

ORDERED, that this Order shall be executed as soon as practical and the authorized eavesdropping shall not terminate upon the initial seizure of certain conversations, but it shall be in force and effect until the seizure of sufficient evidence to justify the arrest of the principals in the criminal activity under investigation, the identity of their co-conspirators and the extent of the conspiracy; and it is further

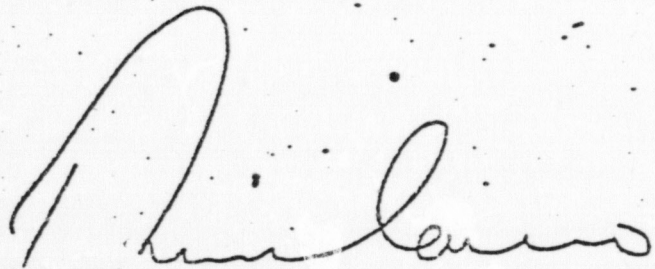
RTD
ORDERED, that the relief granted herein shall take effect the 8th day of November, 1974 and be in full force and effect for 24 hours per day for thirty (30) days, up to and including the 7th day of December, 1974 or until the seizure of the aforementioned evidence, whichever shall first occur; and it is further
RTV

ORDERED, that the interception authorized by this Order shall be conducted in such a way as to minimize the interception of communications not otherwise subject to eavesdropping, under the Criminal Procedure Law; and it is further

ORDERED, that immediately upon the expiration of the Order, the recordings of intercepted conversations shall be made available to this Court, and within fourteen (14) days of the termination of the interception of communications as hereinafter authorized, the District Attorney of Westchester County or his duly authorized agents, shall file a sworn return with this Court

EXHIBIT A TO VICTOR AFFIDAVIT - WIRE
TAP ORDER OF NOVEMBER 8, 1974

stating the fact, the time of commencement and termination of interception of messages, together with a summary of the conversations overheard and recordings, which may thereafter be used in criminal prosecution, lead to other evidence and information leading to the apprehension of perpetrators of crimes.

A handwritten signature in dark ink, appearing to be "J. J. ...", written over a horizontal line.

County Judge of Westchester County

Dated: White Plains, New York
November 8th 1974.

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
CARL A. VERGARI, DISTRICT ATTORNEY, WESTCHESTER
COUNTY, IN SUPPORT OF WIRE TAP ORDER

COUNTY COURT : COUNTY OF WESTCHESTER

-----x

In the Matter
OF THE APPLICATION OF CARL A. VERGARI,
DISTRICT ATTORNEY OF WESTCHESTER COUNTY FOR
INTERCEPTING TELEPHONE COMMUNICATIONS OVER THE
INSTRUMENT BEARING THE NUMBER 914-631-2344
LISTED IN THE RECORDS OF THE NEW YORK TELEPHONE
COMPANY TO ANTHONY J. MILLOW, 25 CEDAR STREET,
NORTH TARRYTOWN, NEW YORK.

-----x

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.

CARL A. VERGARI, being duly sworn, deposes and says that:

I am the District Attorney of the County of Westchester and this application is submitted to the Court, pursuant to Article 700 of the Criminal Procedure Law of the State of New York and Chapter 119 of the United States Code, for an Eavesdropping Warrant permitting wiretapping and the interception of wire communications over telephone instrument bearing the number 914-631-2344 for the purpose of seizing evidence of criminal violations of Article 225 and 105 of the Penal Law concerning the illegal promotion of gambling, possession of gambling records and criminal conspiracy. Said conversations are not privileged.

The source of my facts are the attached affidavits of Special Agent Lance Emory and Detective Richard Spota. It appears from these facts that there is reasonable and probable cause to believe that the interception of the telephone communications of

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EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
CARL A. VERGARI, DISTRICT ATTORNEY, WESTCHESTER
COUNTY, IN SUPPORT OF WIRE TAP ORDER

Francis Millow over telephone 914-631-2344 with persons unknown, will permit the seizure of evidence of the aforementioned crimes, as well as the identity of co-conspirators and others implicated in these crimes and the whereabouts of illegal gambling records. The subject telephone 914-631-2344 is listed in the records of the New York Telephone Company to Anthony J. Millow, 25 Cedar Street, North Tarrytown, New York.

As indicated in the attached affidavits of Special Agent Lance Emory and Detective Richard Spota, other investigative techniques have been employed, but they have thus far been unable to affirmatively establish provable links between Francis Millow and other co-conspirators, the persons with whom he ordinarily engages in transactions involving illegal gambling.

Since the subjects are wary of police interest and part of the illegal activities take place over the telephone, a physical surveillance of the subject would jeopardize the investigation and it would reasonably appear that physical surveillance would be unsuccessful. This is based partially on the fact that this building is in a location which makes surveillance very difficult and could prematurely expose the investigation. It is requested that the relief sought herein be granted for a period of thirty (30) days. Inasmuch as gambling activity takes place during all hours of the day and night, it is requested that the period of interception be for a 24-hour period, and since trafficking in illegal gambling is done on a

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
CARL A. VERLARI, DISTRICT ATTORNEY, WESTCHESTER
COUNTY, IN SUPPORT OF WIRE TAP ORDER

re-occurring basis, it is requested that the interception of wire communications shall not terminate when certain of the described type of communications is first obtained because they represent a conspiracy of unknown dimensions.

To your deponent's knowledge, no previous application has been made to any Justice, Judge or Magistrate for the relief sought herein and your deponent has no knowledge that any of the conversations sought are privileged.

WHEREFORE, your deponent as District Attorney and principal prosecuting attorney of the County of Westchester, respectfully requests that the Court issue an Eavesdropping Warrant in the form annexed, permitting the wiretapping and the interception of wire communications of Francis Millow, over the telephone bearing the number 914-631-2344 for a thirty (30) day period for 24 hours a day, between Francis Millow and persons unknown, concerning the possession of gambling records, the promotion of illegal gambling and criminal conspiracy.

Carl A. Verlar

District Attorney of Westchester County

Sworn to before me this

7th day of November, 1974.

Sally F. DeVries

SALLY F. DEVRIES
Notary Public, State of New York
No. 60-0940875
Qualified in Westchester County
Term Expires March 30, 1975

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EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
DETECTIVE SGT. RICHARD SPOTA IN SUPPORT
OF WIRE TAP ORDER

COUNTY COURT : COUNTY OF WESTCHESTER

-----X

In the Matter of
the Application of
CARL A. VERGARI, DISTRICT ATTORNEY OF WESTCHESTER COUNTY
WESTCHESTER COUNTY FOR AN EAVESDROPPING WARRANT
AUTHORIZING THE WIRETAPPING OF TELEPHONE INSTRUMENT
914-631-2344 LISTED IN THE RECORDS OF THE NEW YORK
TELEPHONE COMPANY TO ANTHONY J. MILLOW OF 25 CEDAR
STREET, NORTH TARRYTOWN, NEW YORK.

-----X

STATE OF NEW YORK

COUNTY OF WESTCHESTER

} ss.

RICHARD SPOTA, being duly sworn, deposes and says that
he is a Detective Sergeant in the Detective Division of the
North Tarrytown Police Department.

That one Francis Milloy of 25 Cedar Street, North Tarry-
town, New York and Thomas Klepper and other unknown persons are
believed to be committing crimes against the Penal Law of the
State of New York, to wit, Promoting Gambling in the First Degree,
Promoting Gambling in the Second Degree, Possession of Gambling
Records in the Second Degree, and Possession of Gambling Records
in the First Degree. Further, that I have been conducting
gambling investigations in North Tarrytown and that said investi-
gation has revealed that Francis Milloy is conducting this gambl-
ing activity at the present time.

Records of the New York Telephone Company have been checked
and reveal that telephone number 914-631-2344 is listed in the

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
DETECTIVE SGT. RICHARD SPOTA IN SUPPORT
OF WIRE TAP ORDER

New York.

That such belief is based upon the following, the sources of which are my personal knowledge as a Detective Sergeant and through conversations with members of the Tarrytown Police Department and members of the FBI, as well as other members of my Department.

On September 12, 1974 at approximately 1:30 P.M. Francis Millow was observed at Teresa Street in North Tarrytown meeting with one Thomas Klepper. At this time, Thomas Klepper was observed giving Millow what appeared to be slips of paper and a large amount of U. S. currency.

On September 13, 1974 at approximately 9:45 A.M. Ptl. Clifone of the North Tarrytown P.D. observed Mr. Francis Millow having a conversation in the rear of the Sleepy Hollow High School with a Mr. Henry Bucci and a Mr. Alphonse Coletti.

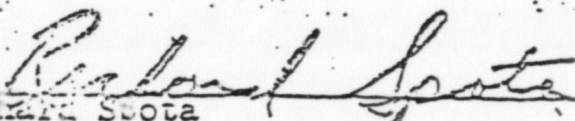
Both of these individuals are known and convicted gamblers. In addition, on October 17, 1974, at approximately 11:55 in the morning, Francis Millow was again observed meeting with and leaving in a car behind Mr. Henry Bucci and another unidentified individual.

Mr. Thomas Klepper has been observed on an almost daily basis entering the Galella Barbershop. Mr. Klepper remains a short while and then departs.

It is the opinion of this officer, based upon my experience

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
DETECTIVE SGT. RICHARD SPOTA IN SUPPORT
OF WIRE TAP ORDER

...and other police officers mentioned above and upon my personal surveillances that Mr. Francis Milow is accepting policy plays from Mr. Thomas Klepper, plays which Mr. Klepper has picked up in different locations in North Tarrytown and Tarrytown, one of which is Galella's Tarrytown Barber-shop. In addition, Mr. Milow is conducting his operations in accord with such known gamblers as Henry Bucci and Alphonse Coletti.


Richard Spota

Sworn to before me this

8th

day of November, 1974.

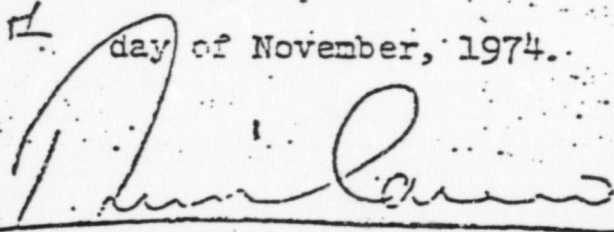

W.C.

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

COUNTY COURT: COUNTY OF WESTCHESTER

In the Matter of the
Application of
CARL A. VERGARI, DISTRICT ATTORNEY
OF WESTCHESTER COUNTY
WESTCHESTER COUNTY FOR AN EAVESDROPPING
WARRANT AUTHORIZING THE WIRETAPPING OF
TELEPHONE INSTRUMENT 914-631-2344 LISTED
IN THE RECORDS OF THE NEW YORK TELEPHONE
COMPANY TO ANTHONY J. MELLOW OF 35 CEDAR
STREET, NORTH TARRYTOWN, NEW YORK

APPLICATION IN SUPPORT
OF AN APPLICATION FOR
AN EAVESDROPPING
WARRANT

STATE OF NEW YORK }

COUNTY OF WESTCHESTER }

ss.

I, ALLEN LANCE EMORY, being duly sworn, deposes and says
that I am a Special Agent of the Federal Bureau of Investigation and
that my present assignment is an investigation of gambling activities
in Westchester County.

That my experience as a Federal Agent has included successfully
conducting gambling investigations which have resulted in the arrest
and conviction of the participants, the use of court authorized
eavesdropping in gambling investigations, conversations with confidential
informants relative to illegal gambling operations, specialized training
received at the Federal Bureau of Investigation Academy pertaining to
enforcement of gambling laws, study of previously successful gambling
investigations and conversations with other Federal Agents and brother
Police Officers pertaining to the investigation of organized gambling
operations. As a result of this experience, I have become familiar with

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

the methods of operations of illegal gambling businesses, to include sports gambling, bookmaking and the illegal gambling scheme commonly known as "policy" or "the numbers game."

That the source of this affidavit is my personal knowledge, conversations with other Federal Agents assigned to this investigation and conversations with members of the Tarrytown and North Tarrytown Police Departments.

That I believe, based upon the following, that one Francis J. Millow is involved in the operation of an illegal gambling scheme in Westchester County and that Mr. Millow is presently accepting bets in a policy operation and, further, that he is accepting bets in both horse racing and sports wagering over his phone in his home at 25 Cedar Street, North Tarrytown, New York, that number being 914-631-2344, listed in the New York Telephone Company Directory to Anthony J. Millow, 25 Cedar Street, North Tarrytown, New York.

Between March 19, 1974 and May 3, 1974, surveillances of Francis Millow's activities were conducted and during this period, 20 occasions, the following conduct was observed as pertaining to Francis J. Millow:

At approximately 1:00 P.M. to 1:15 P.M. each day, Mr. Millow leaves his home at 25 Cedar Street, North Tarrytown, New York, in automobile and drive to the Dobbs Ferry area. Upon arrival at the

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

Dobbs Ferry area, Mr. Milrow would immediately proceed to the Charcoal
corner Restaurant, 146 Main Street, Dobbs Ferry, New York, would remain
in this restaurant for a very short period and was never observed
purchasing anything in this restaurant. Mr. Milrow would then proceed
to the Sinclair R & M Garage, 26 Main Street, Dobbs Ferry, New York,
entering and remaining only a short time in this garage. Mr. Milrow
was never observed purchasing anything at this location. Mr. Milrow
would then proceed to the Green Tavern, 14 Main Street, Hastings-On-
Hudson, New York, arriving at approximately 1:30 to 1:50 P.M. each day.
The Green Tavern is carried in the Police files as a place frequented
by known gamblers. In addition, on more than one occasion, Mr. Milrow
was observed leaving the Green Tavern and other subjects, who are known
gamblers, were observed to follow Mr. Milrow from this location. Mr.
Milrow was observed to have met, after leaving the Green Tavern, with
these known gamblers in remote areas, where Mr. Milrow was observed to
have conversations with these persons. Mr. Milrow has been observed
having a conversation with both Peter Variano and Michael Yannicelli,
both of whom are known and convicted gamblers. Investigation has
indicated that both Peter Variano and Michael Yannicelli presently are
principals in organized gambling activities in Westchester County and
surrounding counties. Michael Yannicelli has two felony convictions in
the Westchester County Courts for promoting gambling, and Peter Variano

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

was released from Federal Prison within the past two years after serving a term following his conviction in the Federal Court in connection with the bribery of New York State Troopers for the purpose of protecting the activities of his gambling organization.

Based upon your deponent's experience, and the conduct which was displayed by Mr. Millow, your deponent states that Mr. Millow was operating as a pickup man and that he was picking up bets in the first two locations, that being the Charcoal Corner and the Sinclair Garage, and that these bets were being dropped off at the Green Tavern in

Hastings-On-Hudson. This activity of Mr. Millow is characteristic of the activity common to a person involved in a "policy" operation.

On May 3, 1974, the surveillance that was being conducted on Mr. Francis Millow was discontinued due to other assigned work and as a result of an arrest by the New York State Police on April 16, 1974, which resulted in a major gambling operation being broken up in the Dobbs Ferry area.

On October 15, 1974, Mr. Francis Millow was observed driving a 1974 Buick Riviera, New York Registration 526 NQB. On this day, Mr. Millow was observed meeting a Mr. Thomas Klepper at approximately 1:23 P.M. at River Street in Tarrytown. Mr. Millow arrived at River Street simultaneously with Mr. Klepper, who arrived in a 1972 Chevrolet, New York Registration 169 KFK. Mr. Millow was observed to enter Mr. Klepper's

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

car and remained from 1:23 to 1:37 P.M., at which time he exited Mr. Klepper's car and was observed to return to his home.

On October 22, 1974, Mr. Milloy was again observed following the same exact procedure as before, except that on this occasion, the meeting took place on Hudson Street in North Tarrytown and was between the times of 1:26 and 1:31 P.M.

Further, that on October 31, 1974, a surveillance was conducted and again the exact same procedure was followed. The meeting took place at Hudson Street and terminated at approximately 1:14 P.M. Again, on

November 2, 1974, surveillance was conducted and Mr. Milloy was again observed to meet Mr. Klepper, the meeting taking place at Teresa Street in North Tarrytown. During this meeting, Mr. Milloy was observed to walk to Mr. Klepper's vehicle, a 1972 Chevrolet, New York Registration 169 KXX, and reach inside the vehicle on the driver's side. The meeting terminated at 1:14 P.M. On this occasion Mr. Milloy was not operating his Buick, but was operating a blue Opel, New York Registration 798 WJP.

Further, on November 5, 1974, another surveillance was conducted. The same procedure was followed with the meeting taking place at Teresa Street in North Tarrytown. On this occasion, Mr. Milloy was observed walking to Mr. Klepper's car, opening the driver's side door and reaching inside to Mr. Klepper. Mr. Milloy was observed taking with his left hand a piece of paper from Mr. Klepper and placing it in his left

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

pants pocket. Mr. Milow also accepted an additional piece of paper with his right hand and put it in his right jacket pocket. This meeting terminated at 1:12 P.M.

It is my opinion that the change in times at which these individuals meet was caused by the race tracks scheduling the first race 20 minutes earlier as a result of the termination of Daylight Savings Time. Post time for the first race at the designated track, in addition to being the cut-off time for the acceptance of wagers on horses running in that race, is also the cut-off time for bets in actual race horse "policy," since the initial digit on the winning policy number for that day is based upon a computation involving results of the first race. It is to be noted in this regard that the meeting taking place between the various individuals prior to changing to Eastern Standard Time from Daylight Savings Time was approximately 20 minutes later.

Special Agent Carl W. Amaditz of the Federal Bureau of Investigation had a conversation with a confidential informant, herein referred to as Mr. A. Mr. A. is a reliable informant, who has been furnishing information concerning Federal and State offenses to the Federal Bureau of Investigation for more than one year. This confidential informant has been contacted by Agents of the Federal Bureau of Investigation on at least a monthly basis and the information he has

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supplied has on all occasions proven to be accurate. On at least two occasions, this informant gave information concerning illegal gambling operations which resulted in the arrest and conviction for gambling of the individuals concerned. On the aforementioned occasions, Mr. A. provided detailed information regarding the gambling activity of the individuals arrested. Upon arrest these individuals were found to be in possession of gambling records.

Mr. A. informed Agent Amaditz that the source of his knowledge concerning Francis Millow is the fact that Mr. A. has placed sports bets with Millow and during mid-October, 1974, Francis Millow advised Mr. A. that he (Millow) was using telephone number 631-2344 to accept horse and sports bets. Further, during the last week of October, 1974, Mr. A. again had a conversation with Mr. Amaditz and he indicated that Mr. Francis Millow had stated that the horse and sports operation was ongoing. Further investigation reveals that Mr. Francis Millow lives at 25 Cedar Street, which appears to be a one-family home in a residential area of North Tarrytown. The investigation of the past eight months has revealed that Francis Millow is not employed in any visible legitimate occupation. In addition, the residence at 25 Cedar Street is located on a narrow one-way street in a residential neighborhood making a physical surveillance extremely difficult to conduct. In this immediate neighborhood live three individuals who are known and convicted

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EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

bookmakers, which in and of itself means nothing to this investigation, but would render any surveillance unproductive, since these people are constantly on the alert for Police activity. In addition, the primary method of transporting information concerning these type gambling operations is by means of the telephone, and physical surveillances are ineffective in dealing with these type operations. Based upon my experience and the observations I have made and the conversations with brother Police Officers and the confidential informant, it is my opinion that Francis Milow is meeting Thomas Klepper for the purpose of accepting policy plays, and in addition is conducting gambling operations through the use of his home telephone. These operations include the acceptance of horse and sports bets and the layoff of "action" to other gamblers.

Based upon my extensive experience in investigating the various forms of illegal gambling, I believe that Francis Milow has been functioning as an essential element of an illegal gambling operation, as demonstrated by his conduct in March, April and May of this year, and the continuation of this conduct, with minor variations, at the present time, and his being observed in conversation with "principals" in existing gambling operations, together with reliable information provided Agent Aschitz.

Conventional and normal investigative techniques would not

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
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provide evidence sufficient to identify and apprehend those individuals occupying the status of principals in this gambling activity, particularly where, of necessity, changing meeting places, schedules, pickup places and other information essential to the day to day activity of a gambling operation must be communicated by phone. In this type of an operation, the actual use of a telephone is criminal and evidence can only be obtained by court authorized eavesdropping.

Further, it is your deponent's opinion, which is based upon his experience in conducting gambling investigations, that none of the conversations sought to be seized can be considered legally privileged.

It is also your deponent's opinion that concentrated and continued physical surveillance by Police personnel would be noted by the occupants of 25 Cedar Street, North Tarrytown, or by other persons who frequent this area, and may be associated with this illegal gambling operation, thus preventing a successful investigation.

Further, it is your deponent's opinion, based upon his experience in gambling investigations and based upon surveillances and conversations with the confidential informant, that telephone conversations pertaining to illegal gambling operations of the nature herein described, and which are sought to be seized by this eavesdropping warrant, can and will be made daily at undetermined times.

For all the aforesaid reasons, it is believed that telephone

EXHIBIT A TO VICTOR AFFIDAVIT - AFFIDAVIT OF
ALLEN LANCE EMORY IN SUPPORT OF WIRE TAP ORDER

instrument number 914-631-2344 will be used to communicate conversations relative to the information desired to identify all of the persons engaged in this illegal gambling operation. It is also reasonable to conclude that only the installation of an eavesdropping device on said telephone instrument will identify these co-conspirators and will furnish the required evidence for their arrest and conviction.

In addition, permission is requested to maintain this wiretap on this telephone instrument with no limitation as to the hours of eavesdropping on a daily basis for the duration of the warrant.

In view of the continuing nature of the criminal activities described herein, it is further requested that should this order be granted, its authorization for interception should not automatically terminate when conversations of the type described have first been obtained.

It is my opinion that evidence sufficient to convict the appropriate persons committing the crimes can be obtained only by the interception of several conversations.

Allen Lance Emory
Allen Lance Emory

In to before me this
day of November, 1974.

Hennetta Heiler

EXHIBIT B TO VICTOR AFFIDAVIT - SEARCH
WARRANT DATED DECEMBER 31, 1974

COUNTY COURT : COUNTY OF WESTCHESTER

In the Matter

of

the Application of a search of the
premises at 929 213th Street, Bronx,
New York, 1st Floor Apartment.

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO
ANY CRIMINAL INVESTIGATOR IN THE WESTCHESTER COUNTY
DISTRICT ATTORNEY'S OFFICE OR ANY MEMBER OF THE NEW YORK
CITY POLICE DEPARTMENT.

Proof by affidavit having been made this date before me
by Criminal Investigator Joseph DiSciorio, that certain
property, possession of which constitutes a crime, will be
found in the premises described above. The property being
sought can easily and quickly be destroyed and disposed of.

YOU ARE THEREFORE COMMANDED, between the hours of
6:00 A.M. and 9:00 P.M. to make an immediate search of the
premises described above, for the following personal
property:

EXHIBIT B TO VICTOR AFFIDAVIT - SEARCH
WARRANT DATED DECEMBER 31, 1974

any gambling apparatus, documents, money wagered on illegal gambling, records of bets, receipts for money wagered, the game commonly known as policy, bets on sporting events and horses, code names of players, runners, pick-up men, controllers, telephone numbers, address books, pads, pens, pencils, keys, tabulating and recording devices and other gambling paraphernalia associated with betting on sport events, bookmaking and the game commonly known as policy.

If you find same, bring it before a term of the County Court, Westchester County, White Plains, New York, and the officers executing this warrant are not required to give notice of their authority or purpose prior to the executing of the search. This order is effective for a period of ten (10) days.

DATED: White Plains, New York

Michael H. 31 1974

Michael H. 31 1974

County Court Judge of Westchester County

EXHIBIT B TO VICTOR AFFIDAVIT - AFFIDAVIT OF
JOSEPH DI SCIORIO, CRIMINAL INVESTIGATOR,
WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

COURT COUNTY : WESTCHESTER COUNTY

In the Matter

of

THE APPLICATION FOR A SEARCH WARRANT FOR THE DESCRIBED PERSONS,
PREMISES, AND VEHICLES.

STATE OF NEW YORK

COUNTY OF WESTCHESTER

ss:

JOSEPH DI SCIORIO , being duly sworn, deposes and says that I am an investigator of the Westchester County District Attorney's office, and that I am presently assigned to investigate violations of Article 225 of the Penal Law of the State of New York, in Westchester County; that I hereby state that there is reason to believe that property of a kind and character described in Section 690.10 of the Criminal Procedure Law which may be found upon the designated persons or in the designated premises and vehicles in the form of records of an illegal gambling operation which is being conducted by the described persons at the described premises and through the use of the described vehicles; that a search of the aforementioned persons, premises and vehicles will disclose evidence of these violations, the possession of which evidence constitutes a crime.

EXHIBIT B TO VICTOR AFFIDAVIT - AFFIDAVIT OF
JOSEPH DI SCIORIO, CRIMINAL INVESTIGATOR,
WESTCHESTER COUNTY DISTRICT ATTORNEY'S OFFICE

The facts set forth in this affidavit are based upon my personal knowledge and upon facts related to me by brother police officers involved in this investigation. The facts known to your deponent personally have resulted primarily from the lawful eavesdropping of the instrument mentioned below. In addition, the facts have been related to me by Agents of the Federal Bureau of Investigation, members of the Tarrytown Police, members of the North Tarrytown Police Department and by fellow members of the Westchester County District Attorney's Investigators.

That on November 8, 1974, a lawful, technical surveillance was instituted in the form of a Court authorized eavesdropping order for telephone instrument 914-631-2344, which is listed in the records of the New York Telephone Company to ANTHONY J. MILLOW, 25 Cedar Street, North Tarrytown, New York, by an order which was signed by Judge RICHARD DARONCO of the Westchester County Court on November 8, 1974. Further, on December 7, 1974, by order of Judge Richard Daronco, this eavesdropping order was renewed and extended. Pursuant to this order, numerous telephone conversations, both incoming to telephone number 631.2344, and outgoing to various other numbers, have been intercepted. The subject of the majority of calls intercepted over this instrument is the acceptance or laying off of illegal gambling bets and wagers on horse racing, sports betting and mutual race horse policy. The residence at 25 Cedar Street, North Tarrytown, is described as a single family home which appears to be occupied by Mr. ANTHONY MILLOW also known as TONY and a Mr. FRANCIS MILLOW, also

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During the past several months, the following is an example of conversations received or called out over telephone 631-2344. On December 17, 1974, at approximately 11:03 A.M., an incoming phone call was received by Tony at 631-2344 and at this time, a man identified as CHAMP proceeds to place horse bets which are accepted by Tony. On December 27, 1974, at approximately 11:15 A.M., an incoming phone call was received at 631-2344 by Joe who is Francis Millow. During this conversation, Joe accepts horse bets from an individual identified as Champ. At approximately 12:05 P.M. on December 27, 1974, an incoming call is received from an unidentified male and during this conversation Anthony Millow accepts numerous mutual race horse policy wagers. At 12:30 P.M. on this same day, another incoming call was received by Anthony Millow and again Anthony Millow accepted numerous mutual race horse policy wagers. At approximately 12:30 P.M. on each of the following days, December 30, December 29, December 28, December 27, and December 26 of 1974, an outgoing call was placed to 212-882-2097, at which time either Anthony or Francis Millow laid off large quantities of mutual race horse policy wagers. During the course of this eavesdropping order it has been the daily practice, at approximately 12:30 P.M. on a regular basis, for either Francis Millow or Anthony Millow to lay off large amounts of mutual race horse policy to the active lay off number. The present lay off number being used is 212-882-2097 and is listed in the records of the New York Telephone Company to MICHAEL BELARDO, at 929 East

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11304 Street, Bronx, New York. The subject phone instrument 834-7037 is located in the first floor apartment.

On December 21 and December 29, 1974, at approximately 1:15 P.M. on each day, an unidentified male was observed exiting from the area of 929 East 213th Street and meeting with one William Murty, a known and convicted gambler. Further, on December 29, 1974, after Murty had left the area of 929 East 213th Street where he had met the unidentified male, Murty was arrested and searched pursuant to a lawful search order by members of the Westchester County District Attorney's Office, and was found to be in possession of in excess of 500 mutual race horse policy wagers. 929 East 213th Street is believed by your deponent to be a wire room which is merely a central location for calling in policy wagers by individuals such as the Millows.

It should be noted that up to and including the date of this affidavit, Francis Millow and Anthony Millow engaged in numerous conversations during the day with unknown subjects over instrument 631-2344 and that they accepted horse and mutual race horse policy wagers regularly. In addition, on an almost regular basis, Francis Millow calls number 914-738-0650 which is listed in the records of the New York Telephone Company to ANTHONY J. RUSSILO, at 211 3rd Avenue, Pelham, New York. This residence is described as a two-family house, the second floor apartment being occupied by Anthony J. Russilo, who is carried in the records of

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The Federal Bureau of Investigation on 12/21/74 R. An example of these calls is as follows: On December 15, 1974, at approximately 6:51 P.M., Francis Milloy made an outgoing call to 738-0650. During the course of this call, Anthony J. Russilo accepted a \$55.00 bet on the outcome of a basketball contest. On December 23, 1974, at approximately 8:00 P.M., an outgoing call was made to 738-0650. During the course of the conversation Anthony J. Russilo accepted a wager on a football contest and indicated that he had at present, forty calls coming in. On December 19, 1974, at approximately 8:37 A.M., an outgoing call was made to 738-0650. The female who answered this instrument indicated that Russ was in the shower and couldn't talk. At approximately 8:45 A.M., an incoming call was received over 631-2344 in which Anthony J. Russilo and Francis Milloy discussed pays and collects, and during the conversation Russilo indicated that he will meet Francis Milloy at the coffee shop at 10:30 A.M., to further discuss this subject. On December 26, 1974, an outgoing call was placed to 738-0650. During the conversation Francis Milloy indicated to Anthony Russilo that he needed money to pay his numbers bill and there was also a discussion of finances between the two subjects relating to the illegal proceeds of this gambling operation. On December 28, 1974 at approximately 8:40 A.M., an outgoing call was made to instrument 738-0650 which is listed to Anthony J. Russilo in which Joseph Russilo was told by Francis Milloy that he, Francis Milloy, had a heavy sports better that he met last night. At this time Russilo

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Anthony Milloy is a number to call in sports bets in case the 1: not around to accept them call, in addition, he is to tell the person who answers the phone that Russ told him to call.

Further, on December 13, 1974, at approximately 6:35 P.M., an incoming call was received over instrument 631-2344 in which Anthony Milloy was asked by a male who identified himself as "Toby", "if you can take sports", to which Anthony Milloy replies that "you must call a different number to place sports bets", and at this time Anthony Milloy proceeds to give Toby the following number: 733-0650, which is listed to Anthony J. Russily at 211 Third Avenue, Pelham, New York. On December 24, 1974, at approximately 11:24 A.M., an incoming call was received over instrument 631-2344 in which Anthony Milloy accepted policy bets from an individual identified as FRED. In addition, on each of the following days, similar calls take place between Fred and one of the Millows: December 16, 1974, at 11:30 A.M., December 14, 1974, at 11:00 A.M., December 13, 1974, at 11:22 A.M., December 12, 1974, at 11:02 A.M., and December 11, 1974 at approximately 11:07 A.M., and on December 9, 1974, at approximately 11:16 A.M., an outgoing call was placed to 631-1863 which is listed in the records of the New York Telephone Company to the Flamingo Restaurant, 53 North Broadway, Tarrytown, New York. During this conversation, Anthony Milloy asks for Fred Patterson, the cook at the above restaurant, and then talks with Fred for the purpose of clarifying a type of policy bet which was one of many that Fred had just called in to Tony Milloy minutes

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provides calls on the other occasions noted above.

Further, surveillances were conducted on Anthony J. Russillo on November 19, 1974. At that time, Russillo was observed driving a 1974 blue Buick, New York registration 925 WPK. On that occasion, Russillo was observed meeting with Milow at the Doughnut Master Restaurant in Elmsford, New York. Milow was observed arriving at this meeting in his 1974 Buick Riviera NY registration 526 NQB.

Your deponent has been active in numerous investigations concerning illegal gambling operations. In addition, your deponent has had extensive conversations with known experts in the field of horse, sports and policy operations; in particular, your deponent has discussed the conversations referred to in this affidavit with a member of the Westchester County District Attorney's staff who has been qualified as an expert in both the Grand Jury of Westchester County and Westchester County Court. Based upon your deponent's expertise and upon his listening to the intercepted conversations mentioned above, it is your deponent's opinion that Anthony Milow and Francis Milow are accepting horse and mutual race horse policy wagers over instrument 631-2342 which is located at 25 Cedar Street, North Tarrytown, New York. In addition, in an operation such as this, records of these wagers must be kept by these individuals for their protection as well as their customers.

Further, it is your respondent's belief that these two in-

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calls to 212-832-2037, at which time these individuals lay off large amounts of mutual race horse policy wagers, the same being accepted by the individual who answers the instrument at 212-832-2037. It should be noted that in a policy operation such as this there must be a system employed by lower level individuals in which they lay off wagers to a central location. This is, in fact, what Francis and Anthony Milow are accomplishing in these calls to 212-832-2037.

In addition, based upon your deponent's expertise and the overhearing of conversations placed to 733-0650, it is your deponent's opinion that Anthony J. Russilo is accepting sports wagers over this instrument, and, in addition, is providing Francis and Anthony Milow with information necessary for them to conduct their operations, to wit, "lines" (point spreads) on sporting wagers.

In addition, Anthony J. Russilo accepts sports wagers from Francis and Anthony Milow. The pays and collects referred to in the conversations described before refer to a system of credit which is established between gamblers. The pays represent that amount of money which must be paid, and the collects refer to that amount of money which must be collected from individuals, and it is evident from the conversations between Anthony J. Russilo and Francis Milow that Anthony J. Russilo is in the business of accepting large amounts of sports wagers, this being based on the extensive conversations between these two subjects as to pay and

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subject concerning numerous letters:

The records of these illegal wagers and the financial records connected with them must eventually be transported through the use of an auto. Therefore it is believed by your deponent that the search of the auto described as used by the subject of the affidavit will produce evidence in the form of records of illegal wagers or the financial records connected with this gambling enterprise.

WHEREFORE, your deponent requests the Court to issue a Warrant in the form annexed authorizing the search of the persons and vehicles mentioned above, and

IT IS FURTHER respectfully requested that since the property sought to be seized consists mainly of gambling records and bets written on small slips of paper which can easily and quickly be destroyed by flushing or burning, for the use of the attached Warrant the Police Officers need not be required to give notice of their authority or purpose prior to execution.

Joseph Di Scorio
JOSEPH DI SCIORIO
Criminal Investigator

Sworn to before me this

31st day of August, 1974

James R. [Signature]
County Judge of Westchester County

v Centore 1
Cr. 377
4/29/76 2
R. L. Carter

bsas

MR. ABZUG: Your Honor, the government is going
to call Francis Millow to the stand.

F R A N C I S M I L L O W, called as a witness by
the government, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Millow, how old are you, sir?

A Twenty-eight.

Q Are you married?

A No.

Q What is your current address, sir?

A 25 Cedar Street, North Tarrytown.

Q How long have you resided at that address?

A All my life.

Q With who, sir?

A My father.

Q Do you know a man by the name of Hank Bucci?

A I refuse to answer under the grounds that I may
incriminate myself.

MR. MITCHELL: Your Honor, at this time I move
for a mistrial.

THE COURT: Motion denied.

MR. ABZUG: Mark this as Government's Exhibit 17.

bsas2

Morrow - direct

(Government's Exhibit 17 marked for
identification.)

BY MR. ABZUG:

Q Mr. Morrow, showing you what has been marked
for identification only as Government's Exhibit 17, have
you seen this document before?

MR. PANZER: Judge, I hate to interrupt, but
I don't know what the document is. I haven't seen it before.
Can we have a side bar?

THE COURT: Not now.

Q Have you seen that, sir?

A I don't remember seeing this.

MR. PANZER: I didn't hear that.

THE WITNESS: I don't remember, sir.

MR. ABZUG: Your Honor, at this time I ask --

MR. KATCHER: Your Honor, at this time on
behalf of my client, Mr. Bucci, in view of the response of
this witness, I respectfully move for the withdrawal of
a juror and the declaration of a mistrial.

THE COURT: Mr. Katcher, the motion is denied.
There is no point in making a motion like that.

MR. ABZUG: Your Honor, at this time I ask the
Court to direct the witness to answer.

THE COURT: On what basis?

1 bsas3

Millow - direct

2 MR. ABZUG: On the basis of what this
3 discloses (handing)

4 ✓ THE COURT: Let the jury be excused.

5 (Jury excused)

6 THE COURT: Mr. Millow, are you aware of the
7 fact that as of October 6, 1975, you refused to give
8 testimony and the government is granting you immunity from
9 any testimony that you do give that might be used against
10 you except in the prosecution for perjury; are you aware of
11 that?

12 THE WITNESS: I have immunity in the federal
13 court except for perjuring myself.

14 THE COURT: At the present time then, the point
15 is that you have refused to testify on the grounds that
16 the testimony may incriminate you.

17 THE WITNESS: Yes.

18 THE COURT: But you are required now to testify
19 because of the fact that the testimony cannot be used to
20 incriminate you, unless -- except on the question of
21 perjury. If you perjure yourself then you may be
22 prosecuted.

23 I am therefore going to order you to testify.

24 THE WITNESS: I have immunity in federal court,
25 is that right?

1 bsas4 Millow - direct

2 THE COURT: Yes.

3 THE WITNESS: I need immunity in the state, your
4 Honor, because I have committed other crimes within the
5 state, and therefore, my testimony could be used against
6 me in other courts, in the state of New York.

7 THE COURT: I don't believe that is so. The
8 immunity that is given you here means it cannot be used
9 against you for any purpose other than the fact of perjury,
10 and therefore I have to direct you to testify. I have to
11 direct you that you have waived your right of self-
12 incrimination. I am going to be required to ask you to
13 testify.

14 THE WITNESS: Like I said, your Honor, I believe
15 that I should have immunity against state prosecutions.

16 THE COURT: Mr. Millow, I'm not going to
17 argue with you about it.

18 My understanding is that the immunity that has
19 been granted to you means that this testimony can't be
20 used against you in any court, except on the question of
21 perjury.

22 I'm not going to hear from you either. You sit
23 down.

24 (Addressing Mr. Siedler:)

25 I am therefore going to have to ask you to

1 bsas5

Millow - direct

2 testify. If yo refuse to testify then of course I'm
3 going to have to hold you in contempt.

4 I will give you a few minutes to make up your
5 mind, and we will call the jury back and Mr. Absug will
6 repeat the questions and you are to give answers to them.

7 MR. ABZUG: Your Honor, I just want to make
8 the following representation to the Court: Up until
9 approximately five minutes ago I was under the impression
10 that Mr. Millow would testify before this Court, and this
11 is totally unexpected to the government.

12 THE COURT: Bring the jury back.

13 MR. ABZUG: May Mr. Aronwald sit at the table
14 with me for the purposes of the examination of this witness?

15 THE COURT: What is your name, sir?

16 MR. ARONWALD: William Aronwald, sir.

17 (Jury present)

18 DIRECT EXAMINATION (Continuing)

19 BY MR. ABSUG:

20 THE COURT: Proceed.

21 Q I ask you again, Mr. Millow, do you know an
22 individual by the name of Hank Bucci?

23 THE WITNESS: Your Honor, I believe that I have
24 to have a counsel here. I have to have my attorney here.
25 I can't answer. I am afraid I might perjure myself once

1 bsas6

Millow - direct

2 again.

3 THE COURT: Might perjure yourself?

4 THE WITNESS: Yes. Under what I just said
5 before, under the state law here.

6 THE COURT: I gave you your instructions about
7 that, my interpretation of what that is. You will either
8 have to proceed with that or not at all.

9 THE WITNESS: I cannot proceed yet. I'll have
10 to have advice of counsel.

11 THE COURT: All right. You are at this point
12 in contempt, and we will proceed without you.

13 Do you want him excused?

14 MR. ABZUG: I'd like the marshal called, your
15 Honor.

16 THE COURT: All right.

17 MR. ABZUG: Your Honor, in light of what has
18 occurred, might I have a short recess?

19 THE COURT: Yes.

20 MR. ABZUG: Thank you.

21 THE COURT: The jury will be excused. How
22 much time do you want, about ten minutes?

23 MR. ABZUG: Yes, about ten to fifteen minutes,
24 your Honor.

25 THE COURT: I'll give you ten. The jury may be

1 bsas7

Millow - direct

2 excused.

3 (Jury excused)

4 THE COURT: Who is your lawyer?

5 THE WITNESS: Martin Varrichio.

6 THE COURT: You should have had him here.

7 MR. PANZER: I just can't hear, your Honor.

8 THE COURT: I'll try and do my best.

9 MR. ABZUG: Mr. Varrichio was made aware that
10 his client was testifying here today. Mr. Millow also knew
11 he was going to be testifying here today. However, I think
12 it might be appropriate, in light of the witness' disobedience
13 to your order, to insure that he fully understands the
14 order, that perhaps we get a Legal Aid lawyer up here to --
15 so that he can consult with him.

16 THE COURT: Where is Mr. Varrichio?

17 MR. ABZUG: I don't know that, your Honor.

18 I asked him -- your Honor, prior to Mr. Millow's
19 appearance, I asked Mr. Varrichio if he wanted to be down
20 here. Mr. Varrichio said no. I asked Mr. Millow if he
21 wanted Mr. Varrichio down here. He said no.

22 THE COURT: Continue, please.

23 In the first place, what you need is a marshal,
24 because from now on Mr. Millow is in custody.

25 Call a Legal Aid lawyer and have him consult

bsas8

Morrow - direct

1 with him, and also during this recess put in a call to
2 Mr. Varrichio.
3

4 MR. ABZUG: One last thing, your Honor, this --
5 as I said, this is totally unanticipated. I spoke to
6 Mr. Morrow before he came on today and he said he was going
7 to testify. Mr. Aronwald informs me that he spoke with
8 Mr. Morrow for about fifteen minutes and Mr. Morrow
9 indicated he was going to testify truthfully.

10 I fully understand the Court's instructions
11 that this trial is to be expedited, and I have done my best
12 to comply with those orders. However, this witness was
13 perhaps -- perhaps his Honor is aware from my opening, he
14 is one of the principal government witnesses and it was
15 anticipated his testimony would take at least the entire day.
16 We were going to introduce the results of the search of
17 his house through this witness, we were going to introduce
18 the results of the wiretap through this witness.

19 Your Honor, I am distressed to report that I am
20 afraid that the government is at this juncture only ready
21 to proceed with one witness, that is Mr. Spota, who is
22 going to introduce this evidence. The remaining witnesses
23 are just not physically here.

24 THE COURT: I suppose it may well be that
25 Mr. Morrow may have a change of mind if he gets some legal

1 bsas9

Millow - direct

2 advice. I don't know.

3 MR. ABZUG: I merely wanted to advise the Court
4 of the government's readiness for trial, or lack thereof,
5 at this point.

6 THE COURT: All right. At any event, I think you
7 better consult with an attorney, Mr. Millow. I've told
8 you what the scope of your immunity is, and that that scope
9 covers any court in the United States. You better consult
10 with your attorney about this in terms of your refusal to
11 testify. Get him a Legal Aid counsel.

12 Is there anything further? You can make the
13 calls to Legal Aid and try to get a lawyer for him. Any-
14 thing further to be done other than to recess for a few
15 minutes?

16 MR. ABZUG: No, your Honor.

17 (Recess)

18

19

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21

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23

24

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Wilhelmi-

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THE COURT: All right.

(Tape played.)

THE COURT: All right. Pass those transcripts back.

MR. ABZUG: Your Honor, I also believe Douglas Wilhelmi can make another voice identification of another call that was recorded, that is the call on November 14, 1974, at 1700 hours, 46-B marked for identification. He has not listened to that tape prior to this proceeding, your Honor, and the procedure which the government respectfully suggests is that there are earphones that Mr. Wilhelmi could listen to the conversation, or portion of the conversation, make the identification if he is able to make the identification, then we could play it over the speakers to the jury.

(Government's Exhibit 46-B marked for identification.)

MR. BRODERICK: I object to that. How is the government so sure that he is going to make that identification?

MR. MITCHELL: Your Honor, if the witness is going to identify a voice from a tape I think the government hasn't had the identification established as yet, the defense would be entitled to a Wade hearing on the voice. Why

1 mct318

Wilhelmi-

2 should he be limited to one voice? Let him pick the
3 voice out from several.

4 MR. BRODERICK: Your Honor, that's my application
5 in full when I said I was totally surprised.

6 MR. ABZUG: Your Honor, he has already testified
7 that he is familiar with the voice of Peter Variano. The
8 foundation has been laid. He has already identified one
9 telephone call. If the man is able to identify this voice
10 that we are about to play as Peter Variano and that of
11 Joseph Milow, he will do that. If not, the government will
12 withdraw its offer of proof. It's as simple as that.

13 THE COURT: Well, it appears to me that he ought
14 to have listened to this before. He should have listened
15 to this before. And you should have had him do the same
16 thing with that tape that he did with the previous one.

17 Now, what you have done is --no, I don't think I
18 am going to allow it. Now, what you have done is to in
19 fact tell him that that is the voice by virtue of these
20 proceedings. The Wade matter is he should have listened
21 to the voice earlier. Then we have something we know what
22 we are playing is Variano's voice, and now he is going to
23 listen to it and say, it's his voice. That's no certainty
24 in terms of any identification.

25 I am not going to allow that procedure to be

mct319

Wilhelmi

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1 followed.

2
3 MR. ABZUG: Your Honor, I don't understand how
4 that procedure differs in substance from the procedure --
5 well, it does differ in that it involves him listening to
6 the conversation outside the presence of the jury with the
7 earphones on for thirty seconds, something that I agree,
8 your Honor, would have been more expeditious to do before
9 this proceeding. But I don't see other than --

10 THE COURT: The problem I have with it is that
11 who else is he going to say? The point is that at this
12 time we all know, and you have even announced that we are
13 playing Mr. Variano's voice, and we want him to get it in
14 order to get it to the jury -- sit down, Mr. Broderick,
15 you don't have anything to say yet -- and present the
16 matter to the jury.

17 MR. ABZUG: Well, the jury can --

18 THE COURT: No, you have told him whose voice
19 it is on this next tape, Mr. Abzug.

20 MR. ABZUG: Well, your Honor, with all due res-
21 pect if he is familiar with Mr. Variano's voice, as he
22 says he is familiar --

23 THE COURT: I'll tell you what I'll do. Play
24 tape 50-A, 49-A and 46-B, and play them in an order that
25 only -- well, Mr. Broderick can know what the order is as

1 mct320

Wilhelmi -direct

2 well, and on the basis of that let Mr. Wilhelmi tell us
3 which of the tapes has his voice on it.

4 MR. ABZUG: Your Honor, I am sorry. Mr. -- may
5 I just ask one further question of the witness that might
6 eliminate this?

7 THE COURT: Yes.

8 BY MR. ABZUG:

9 Q Mr. Wilhelmi, have you listened to a conversation
10 that was recorded on November 14th --

11 MR. MITCHELL: Your Honor, I am going to
12 object to a date.

13 THE COURT: What?

14 MR. MITCHELL: I am going to object to a date
15 being furnished to the witness. He is supposed to make an
16 identification from the tape.

17 THE COURT: Well, I gather that Mr. Abzug is
18 having second thoughts. I think Mr. Abzug seems to feel
19 now that maybe Mr. Wilhelmi has listened to that tape
20 before.

21 Q Have you listened to any conversation recorded
22 on November 14, 1974 at 1700 hours prior to this proceeding,
23 Mr. Wilhelmi?

24 A The one on November 14th?

25 Q Yes.

1 mct321

Wilhelmi-direct

2 A Regarding who? Yes, I have. I have listened
3 to several.

4 THE COURT: Well, at any event I am going to have
5 to see that it is done as I have suggested since we have
6 got ourselves in this hassel.

7 Now, Mr. Broderick, you come up and select the
8 order in which these tapes are going to be played. Come up,
9 Mr. Broderick. He is your client, isn't he?

10 MR. BRODERICK: Yes, your Honor.

11 THE COURT: All right. Pick out those tapes.

12 MR. BRODERICK: Your Honor can I have a sidebar
13 conference?

14 THE COURT: You are not having any sidebar con-
15 ference about anything. Now, either you do what I suggest
16 you do or you waive it. Now, play them in some order that
17 only Mr. Broderick and you will know the order. Don't
18 put the number of the tape on that is not to be shown.

19 MR. ABZUG: Is it necessary, your Honor, do you
20 wish the other conversations to be also transcribed or is
21 that not necessary?

22 THE COURT: No, all I want done is to have Mr.
23 Wilhelmi listen and then tell us which of those tapes --
24 the voice he recognizes as that of Mr. Variano. He can only
25 listen a few minutes and tell us that.

1 mct322

Wilhelmi-direct

2 MR. MITCHELL: Your Honor, we have selected an
3 order we say should be played.

4 THE COURT: All right. Don't show the number of
5 the tape now when you put it on.

6 Mr. Wilhelmi, put your earphones on. All you
7 have to do is play a few minutes of it.

8 MR. ABZUG: Yes, your Honor.

9 THE COURT: And you are to tell us, Mr.
10 Wilhelmi, whether the tapes are one, two or three, that
11 you hear Mr. Variano's voice.

12 MR. BRODERICK: Your Honor, if I can refresh
13 my notes, there is one tape I would like to have played.

14 THE COURT: Mr. Broderick, let's deal with that
15 later.

16 MR. BRODERICK: Your Honor, the conversation
17 itself might give away who --

18 THE COURT: Let's deal with that later.

19 MR. BRODERICK: But I thought we were testing
20 his ability, your Honor, and the conversation itself. If
21 the conversation says, Hello, this is Pete, then he is going
22 to say that's the conversation instead of listening to one
23 of these. How can I test him on that? I think there
24 are ways of testing his credibility on this point.

25 MR. ABZUG: Your Honor, do you wish these conversa-

1 mct323

Wilhelmi-direct

2 tions just to be played on the headsets, so the jury
3 doesn't --

4 THE COURT: Just so he can hear it.

5 MR. ABZUG: All right.

6 THE COURT: All right. Play the tape. I want
7 the number of the tape.

8 MR. ABZUG: This tape is 49 marked for identi-
9 fication.

10 THE COURT: All right, that ruins that one.
11 So let's take another one. I want the number of the tape
12 covered, number one, so there is no possibility of its
13 being seen.

14 Now, pick another one.

15 (Tape played.)

16 THE COURT: All right. Do you recognize any of
17 those voices?

18 THE WITNESS: Just Joseph Millow, your Honor.

19 MR. BRODERICK: May we have the witness excused
20 while we are doing this, your Honor? I think that might
21 be easier. For my purposes it would be.

22 THE COURT: There is no reason to excuse him.
23 You have just got to operate the --

24 MR. BRODERICK: How can I choose a tape? The
25 order we are choosing --

1 met324

Wilhelmi-direct

2 THE COURT: Mr. Broderick, if you find yourself
3 in that position, I can't help you.

4 MR. SIEDLER: Judge, may I make a suggestion?
5 If he started the tape in the middle so that it won't
6 start off by mentioning a name, perhaps it would be more--

7 THE COURT: Well, all right. Some of them don't
8 mention the name until the middle.

9 MR. SIEDLER: Well, that's right, but it is
10 more likely when a person picks up the phone to mention
11 the name.

12 THE COURT: All right. Start the tape and let's
13 get this process over with.

14 MR. BRODERICK: Your Honor, I am looking for
15 one particular tape, and I am informed that it's not here.

16 THE COURT: Mr. Broderick, that's your problem.
17 I have enough problems. That is your problem. All right,
18 are you ready?

19 (Tape played.)

20 MR. BRODERICK: Your Honor, that's the same
21 voices as before.

22 THE COURT: Mr. Broderick, I am not asking you
23 to be making statements like that. You know you are wasting
24 time.

25 MR. BRODERICK: I am trying to represent my client,

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Wilhelmi-direct

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1 your Honor, and I don't understand --

2 THE COURT: Did you recognize any of those

3 voices?

4 THE WITNESS: Just Joseph Millow.

5 THE COURT: No, I don't really mean that. All I

6 want you to do when I say do you recognize the voice, I

7 want to know whether or not Mr. Variano's voice is on it.

8 THE WITNESS: No.

9 THE COURT: The answer was no on the first two?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right.

12 Ready? All right.

13 (Tape played.)

14 THE WITNESS: Peter Variano.

15 THE COURT: All right.

16 Is that correct, Mr. Broderick?

17 MR. BRODERICK: Yes, I think -- I don't know.

18 I can't tell on voices. I don't know.

19 THE COURT: Is that the voice--

20 MR. ABZUG: That was the conversation that we

21 intended to introduce, your Honor.

22 THE COURT: All right, let's proceed.

23 (Tape played.)

24 MR. ABZUG: Your Honor, with respect to the

25

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Wilhelmi-direct

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1 remainder of the government's voice identification we
2 are going to have the same problem. I don't believe that
3 a voice lineup is required in this circumstances.
4

5 THE COURT: Well, with regard to the next one I
6 am reasonably satisfied that he will recognize the voice
7 you will play.

46 46 8 MR. ABZUG: The government is not going to
9 introduce any further tape recordings against Mr. Variano.
10 What I am saying, your Honor, if I may just be heard for
11 one minute, is that had these witnesses listened to the
12 conversation before trial, as I agree the better procedure
13 would have been, quite frankly, your Honor, we didn't have
14 time in this case, but had that been done they wouldn't
15 have been confronted with the voice lineup. They would
16 have played the tape as Mr. Wilhelmi had done with respect
17 to the first conversation --

18 THE COURT: The point is by not doing it you
19 gave defendants an opportunity to make a demand. So you
20 put yourself in that position.

21 MR. ABZUG: Well, it's a bad position to be in,
22 your Honor, for a variety of reasons, but my only point is
23 I think the way it can be handled without the necessity of
24 playing three tapes at random is to have the witness do
25 here in court what he would have done back in my office.

mct327

Wilhelmi-

1 That is, listen to the tape outside of the presence of
2 the jury, say whether he can recognize that voice and if
3 he can then identify it. If he can't, he can't. But I
4 don't believe that the government is required to at the
5 time that the witness is making a voice identification
6 In our office play him a variety of tapes and ask him
7 which one is which.
8

9 I am aware of no requirement of law that forces
10 us to do that. As long as the man is able to testify
11 that he is familiar with A --

12 THE COURT: Mr. Abzug, the last thing that you
13 should do is require us to sit through this in order for
14 your witness to identify something in court. Now, what you
15 ought to do is have the identifications made and have your
16 witness come here prepared to testify about it in regard to
17 it.

18 What you are doing now is having the witness
19 come in and we are supposed to listen and have him do it out-
20 side the presence of the jury. You can have it done some
21 other way.

22 Now, where are we now?

23 MR. ABZUG: Your Honor, I am informed that with
24 respect to one of our witnesses, Mr. Carmen De Falco,
25 that the tape recordings have been played, he has reviewed

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Wilhelmi -cross

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1 them and made appropriate identifications.

2
3 THE COURT: All right. You have your other
4 witnesses make their identification outside of court. I am
5 not going to take time like this.

6 Are you through with Mr. Wilhelmi?

7 MR. ABZUG: Yes, your Honor.

8 THE COURT: All right.

9 MR. BRODERICK: Your Honor, may I cross-examine?

10 THE COURT: Of course.

11 CROSS-EXAMINATION

12 BY MR. BRODERICK:

13 Q Agent Wilhelmi, when you were asked to review
14 these conversations and play them back you looked at the
15 log sheet first, didn't you?

16 A No.

17 Q You just played all of these reels and then
18 found a conversation --

19 A I am sorry; I didn't understand the question.

20 Q I will withdraw it and start all over again.
21 You were told here prior to coming to testify that
22 you would be asked to identify -- that you would be asked
23 to identify the voice of Peter Variano, were you not?

24 A Yes.

25 Q You knew about that prior to coming into court

1 mct329 Wilhelmi-cross

2 today, did you not? 1100

3 A Yes.

4 Q Did you not go and testify that you listened to
5 the reels of tape, did you not?

6 A Yes, sir.

7 Q And prior to going and listening to the reels of
8 tape didn't you go to the logbook showing the various
9 conversations on these reels of tape?

10 A Yes.

11 Q Didn't you go to the logbook and it showed a
12 conversation with a person by the name of Pete; isn't that
13 correct?

14 A Yes, I believe his name was in there.

15 Q And you looked at the logbook where it said
16 Pop and Pete and then you went and played the reel of that
17 conversation, didn't you?

18 A Right,

19 Q So you knew prior to even listening to the conver-
20 sation that you were looking at this conversation for the
21 name of Peter Variano, were you not?

22 A Yes. Right.

23 MR. BRODERICK: Your Honor, I move to strike
24 all this testimony.

25 THE COURT: I don't see any problem about that.

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Wilhelmi-cross

1 mct330 Wilhelmi-cross 1187
2 It's a question of weight. I think it is a question of
3 weight, that's all.

4 Call your next witness. J

5 (Witness excused.)

6 MR. ABZUG: The government calls Carmen DeFalco.

7 C A R M E N D e F A L C O, called as a witness by the
8 government, being first duly sworn, testifies as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. ABZUG:

12 Q Mr. DeFalco, when you testified here last you
13 indicated that you had known Mr. Coletti for approximately
14 ten years; is that correct?

15 A Yes, sir, that's right.

16 Q And you had had a number of conversations with
17 him in his presence; is that correct?

18 A Yes, sir.

19 Q And the same is true of Mr. Millow?

20 A Yes.

21 Q I am speaking now of Francis Millow.

22 A Yes.

23 Q And Mr. Anthony Millow as well?

24 A Yes, sir, that's correct.

25 Q Prior to your coming here, Mr. DeFalco, have you

1 cmds 87

2 A F T E R N O O N S E S S I O N

3
4 (In open court - jury not present.)

5 THE COURT: I have concluded that the conspiracy
6 count must be dismissed as to all the defendants, because
7 there is a variance between the government's theory of the
8 case and its proof.

9 Let me briefly indicate my reasons. There are
10 at least two time frames, and probably three, that have
11 been set forth in this record, and they are separate and
12 distinct. The first is from 1968 to 1972 involving Centore
13 and DeMichaels as far as the defendants in this case are
14 concerned;

15 The second is in 1973 involving Variano and
16 Bucci. I suppose we can merge that with the 1974 time frame
17 because Mrs. David was talking about football bets, and
18 obviously football bets occur in the fall and in the winter.
19 So that under that we can reduce the time frame to two.
20 And that time frame involves Variano and Bucci linked to
21 football betting in 1974, as is Coletti and Russillo. And
22 Picciano, Ostrander and Monaco are linked to numbers in 1974.

23 Now, it is true that this trial was not as
24 extensive as Bertolotti on which I rely for the position I
25 am taking, but I think that the principle which is applied

1 cmds 88

2 in that case has to govern disposition of the case here.

3 As I understand it, the principle is that in a
4 multi-defendant trial where one defendant is required to
5 sit through lengthy testimony which in no way involves him,
6 that this is prejudicial and damaging.

7 Let me just give you a few examples. As I
8 recall the testimony, Centore's name was mentioned at the
9 beginning, and DeMichaels, and they hadn't been heard of
10 since in terms of the conspiracy.

11 Mr. Colettti, I had forgotten that he was even
12 on trial until yesterday when suddenly his name was mentioned
13 in some wiretap conversations. One segment of the proof
14 involved the three, apparently younger defendants, Picciano,
15 Ostrander, Monaco, but they have not been linked to the
16 others, and another concerned Russillo, Variano and Bucci.
17 But nowhere are they linked to these other people in terms
18 of time frame.

19 Under those circumstances it is clear to me that
20 Centore, DeMichaels, Coletti, Picciano, Ostrander and Monaco
21 were prejudiced by the variance, and as to them I am clear
22 that the count must be dismissed.

23 I am certain that Russillo was prejudiced as
24 well. While I do have some doubts that Variano and Bucci
25 were prejudiced in the sense that I am talking of, since

1 cmds 89

2 there was a great deal more testimony over a longer time
3 span involving them, I resolved the doubt in their favor
4 and we will dismiss the count as to them.

5 Now, the substantive count I reach an entirely
6 different conclusion on. I think that there is sufficient
7 testimony from Calise to send to the jury as to Centore and
8 DeMichaels, the question of their violation of Count 2.
9 While Mr. Panzer indicated that the evidence seized related
10 to 1970, which may be true, my recollection is that Calise
11 testified that the operation continued until he left in
12 August of 1971, and that it involved a large number of people
13 and money. And I think that under the circumstances that
14 as to those two, a prima facie case has been made to come
15 within the statutory requirements.

16 As to Variano, Coletti, Bucci and Russillo, the
17 evidence links all of them to Milloy, and to each other.
18 Thus, I have decided to send the case, as far as they are
19 concerned on the substantive count, to the jury.

20 Picciano, Ostrander and Monaco are linked to-
21 gether and to Evangelista and Murty and, therefore, I am
22 sending the case involving them on the substantive count to
23 the jury.

24 While I realize that there is a danger here
25 that either Mr. Mitchell or Mr. Panzer pointed out with

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1 cmds 90
B68 2 the conspiracy count being dismissed of a spill-over of
3 fact as regards the hearsay testimony. I think that that
4 problem need not be overemphasized in this case. The jury
5 has been carefully instructed throughout the trial that the
6 testimony coming in should be used only against the person
7 who participated, and they will also be so instructed at
8 the close of the trial in terms of their consideration of
9 the evidence.

10 Get the jury in, please.

11 MR. SIEDLER: Your Honor, may I ask about the
12 schedule for summations? Do you intend to complete summa-
13 tion today?

14 THE COURT: I don't know what you're going to
15 do. I don't know what you intend to do. Get the jury in
16 and make your decision. Are you going to put on some
17 evidence, or are all of you going to rest? Then all of
18 you rest. Then we will decide.

19 MR. BRODERICK: I would like to just talk to
20 the government about one transcript before I rest. Maybe
21 it can go in by stipulation before the jury gets here.

22 THE COURT: You talk to the government. Get
23 the jury in.

24 (Jury enters the courtroom.)

25 THE COURT: Ladies and gentlemen, the government

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et al.

Carter, R.L.

1 bssr

THE CLERK: As the Court that is about to charge the jury, those spectators desiring to leave the room may do so now.

C H A R G E O F T H E C O U R T

Ladies and gentlemen, we now come to that part of the case where the evidence is in, the lawyers have presented their arguments, and you are about to exercise your final role, which is to pass upon and decide the fact issues in the case.

You are the sole and exclusive judge of the facts. You pass upon the weight of the evidence, you determine the credibility of witnesses, and you resolve such conflicts as there may be in the evidence, and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you, and to apply it to the facts as you find them. The logical result of that application is your verdict in the case. I have permitted each of you to take notes during the course of this trial. I expect you to use whatever notes you took merely as memory aids, they should not be allowed to take precedence over your independent memory of the facts. Moreover,

2 bssr

merely because a fellow juror may have memorialized in his or her notes something contrary to your recollection is not to be taken by you to mean that your memory is in error. It is your own recollection of the facts, and yours alone, that is controlling.

Now, in respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or for the defense may have said with respect to matters in evidence during the trial in a question, in colloquy with the Court, in argument or in summation, is not to be substituted for your own recollection of the facts. So, too, anything the Court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection.

The case must be decided by you upon the sworn testimony of the witnesses, and such exhibits as were received in evidence, and any stipulation among counsel.

At times during this trial I have been called upon to make rulings upon various matters of law. As for example, when a question was put to a witness and he was objected to or after a question was asked a motion was made to strike the answer, or an offer of a document was objected

1 3 bssr

2 to. As you know, I have sustained some objections and I have
3 overruled others. I have received and rejected exhibits,
4 but it is essential in the performance of your duty that
5 when anything was ordered stricken from the record, or re-
6 jected, that you put it out of your mind and disregard it
7 entirely. Similarly, if a question was asked and an ob-
8 jection to that question was sustained, and no answer was
9 given, the question itself should play no part in your
10 consideration of the case.

11 Please do not concern yourselves at all with my
12 reasons for these rulings. They are purely legal matters,
13 and are of no concern to you.

14 Conferences at the bench were conducted at the
15 request of the attorneys. As I have advised you, these
16 conferences were solely on questions of law and are of no
17 concern to you. You are not to draw any inferences against
18 counsel or any defendant because such requests for a con-
19 ference were made or because such requests were denied.

20 Now, it is your function to determine the truth
21 or falsity of the testimony of each witness. No inference
22 as to the credibility of any witness should be drawn from the
23 fact that upon occasion I have asked questions of a witness.
24 My questions were only intended for clarification or to
25 expedite matters. They were not intended to suggest any

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2 opinion as to the credibility of any witness who appeared
3 before you.

4 How do you determine the truth and how do you
5 appraise the credibility of witnesses?

6 Well, as I told you when you were first sworn in,
7 you use your plain, everyday common sense. The degree of
8 credit to be given to a witness should be determined by
9 his or her demeanor here. His or her relationship to the
10 controversy and to the parties, his or her bias or impar-
11 tiality, the reasonableness of his or her statements, the
12 strength or weakness of his or her recollection, viewed in
13 the light of all the other testimony, and the attendant
14 circumstances in the case.

15 You observed the witnesses. You heard their
16 testimony. How did they strike you? Did their answers
17 seem frank, open, truthful and candid, or were they
18 equivocal, deliberately confusing or evasive, or were they
19 somewhere in between?

20 How did each witness impress you? And so you
21 take each one, and on the basis of your common sense and
22 your everyday experience you determine whether or not you be-
23 lieve the witnesses and to what extent you believe them.

24 In passing upon the credibility of a witness,
25 you may also take into account whether there were material

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2 inconsistencies or contradictions within his or her own
3 testimony; whether a witness changed his or her testimony;
4 the extent to which he or she has been corroborated or
5 contradicted by other credible evidence.

6 Now, the testimony of a witness may fail to
7 conform to the facts as they occurred because the witness is
8 intentionally telling a falsehood, because a witness didn't
9 accurately observe the events about which he testified,
10 or because his recollection of what happened is at fault,
11 or even because he has not expressed himself clearly in
12 giving his testimony.

13 You are entitled to consider the possibility
14 that when a witness is called upon to testify sometime
15 after the event, that inconsistencies may result from an
16 innocent mistake or lapse of memory, rather than from a
17 deliberate attempt to falsify or change the facts.

18 It is not unusual for a witness in a proceeding
19 to utter inconsistencies at some stage.

20 You may accept so much of the testimony of a
21 witness as you may deem true and disregard the rest. You
22 are at liberty, if you deem it appropriate, to disbelieve
23 the testimony in whole or in part even though it is not
24 otherwise contradicted or impeached.

25 You may consider whether the witness is a

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1 6 bssr

2 disinterested one or whether he is fostering some interest
3 of his own in giving the testimony.

4 Now, an interested witness is not necessarily
5 unworthy of belief. The interest of a witness in the
6 outcome of the lawsuit is a factor, however, which you may
7 consider in determining the weight and credibility to be
8 given to that witness' testimony.

9 It should be remembered that the testimony of
10 agents of the Government are not to be entitled to any
11 greater or lesser weight than the testimony of another
12 witness who is not an agent of the Government.

13 Now, the Government called as a witness Michael
14 Calise and Angelina David, who, if their testimony is to
15 be accepted, were accomplices in the crimes charged
16 against the defendants in this case.

17 In the prosecution of crime the Government is
18 frequently called upon to use witnesses who are accomplices.
19 Often it has no choice. The Government must rely upon
20 witnesses of transactions such as they are.

21 There is no requirement in the Federal Courts
22 that the testimony of an accomplice be corroborated. The
23 Government contends that these witnesses' testimony is
24 corroborated by other evidence with respect to several key
25 portions of their testimony. However, even without such

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2 corroboration, conviction may rest upon the testimony of an
3 accomplice, if you believe it and find it credible, and
4 it does not follow that because a person has acknowledged
5 participation in some criminal act that he or she is
6 incapable of giving a true version of what he or she tes-
7 tified to in the case on trial.

8 Such testimony, however, should be viewed with
9 caution and scrutinized with care. The fact that a witness
10 is an accomplice may be considered by you as bearing on
11 his or her credibility: Was his testimony inspired by
12 any motive of reward, of self interest or hostility to the
13 defendant so that he gave false or colored testimony against
14 him in this court?

15 If you find that it was, you ought to unhesi-
16 tatingly reject it. However, after a cautious and careful
17 examination of an accomplice's testimony and his or her
18 demeanor on the witness stand, if you are satisfied that he
19 or she told the truth as to certain events, there is no
20 reason why you should not accept it as credible and act
21 upon it accordingly.

22 In deciding this case you will be called upon
23 to consider both direct evidence and circumstantial evidence,
24 and I would like to explain the difference between these
25 two types of evidence. Direct evidence is where a witness

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2 or participant testified as to what he saw, heard or ob-
3 served, what he knows of his own knowledge; something which
4 comes to him by virtue of his senses. A document can also
5 contain direct evidence.

6 Circumstantial evidence is evidence of facts and
7 circumstances from which one may infer connected facts
8 which reasonably flow in the common experience of mankind.
9 Stated somewhat differently, circumstantial evidence is
10 evidence of facts from which other facts that are material
11 in the lawsuit may be found by the process of inference.

12 Let me give you an example that I believe has
13 nothing to do with the facts in this case. Suppose you
14 had a material issue in some case as to whether John Doe
15 was drinking alcoholic beverages on some particular night.
16 A witness might take the stand and testify that he had
17 given whiskey to John Doe and had seen him drinking it.
18 That would be what is termed direct evidence. If you
19 believed the witness, and thought he was able to report
20 accurately, you could find from that direct evidence that
21 John Doe had been drinking on the night in question.

22 On the other hand, you may have a witness tes-
23 tify that he had seen John Doe enter a tavern and then had
24 seen him leave the tavern a few hours later walking and
25 talking in ways that suggested he was drunk. If you believed

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2 that witness, and thought he was an accurate reporter, you
3 could find on the basis of that testimony that John Doe had
4 been drinking on the night in question. You would be using
5 circumstantial evidence to find the existence of a material
6 fact in that hypothetical case. But let me tell you that
7 for your purposes there is no general rule of law, and no
8 general rule of good sense that places either of these two
9 items of evidence, direct or circumstantial, in a general
10 way on a higher or lower or different footing from the other.

11 With respect to any evidence admitted into a
12 trial record, whether it is direct or circumstantial, it
13 is entitled to such weight, and you are permitted to draw
14 such reasonable inferences, as your good judgment dictates
15 in a particular case. The weight and effect of any item
16 or category of evidence depends not on whether it is to be
17 categorized as direct or circumstantial, but on the concrete
18 significance of that particular piece of evidence in its
19 trial setting and upon its intrinsic credibility and per-
20 suasive power in the light of your observations of the
21 witness, your own general experience of things, and your
22 reasonable analysis of the whole record.

23 There are times when different inferences may
24 be drawn from facts, whether they are proved by direct or
25 circumstantial evidence. The Government asks you to draw

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2 one set of inferences while the defendants ask you to draw
3 another. It is for you to decide and for you alone what
4 inferences you will draw.

5 As I advised you at the start of this trial,
6 the indictment is merely an accusation or charge. It is
7 not evidence of proof of a defendant's guilt and no in-
8 ference of any kind may be drawn from the indictment.

9 The Government has the burden of proving its
10 charges against each defendant beyond a reasonable doubt.
11 It is a burden that never shifts and remains upon the
12 Government throughout the entire trial.

13 A defendant does not have to prove his innocence.
14 On the contrary, he is presumed to be innocent of the
15 accusation contained in the indictment, and that presumption
16 of innocence was in his favor at the start of the trial,
17 continued in his favor throughout the trial, is in his
18 favor even as I instruct you now. It remains in his favor
19 during the course of your deliberations in the jury room.
20 It is removed only if and when you are satisfied that the
21 Government has sustained its burden of proving the guilt
22 of a defendant beyond a reasonable doubt.

23 What is a reasonable doubt? It is a doubt
24 based on reason which arises from the evidence or lack of
25 evidence in the case. It is a doubt that a reasonable man

11 bssr

or woman may entertain. It is not a fanciful or speculative doubt. It is not an imagined doubt. It is not a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. It is not proof to an absolute certainty -- let me repeat, it is a reasonable doubt. It is a doubt that appeals to your reason, to your judgment, your common understanding, and your common sense, a doubt that would cause you to hesitate to act in matters in your daily lives. On the other hand, the Government does not have to prove the guilt of a defendant beyond all possible doubt or to a positive certainty. If that were the rule, few people, however guilty they might be, would be convicted.

If, when you consider the evidence in this case, you have a reasonable doubt that the Government has proved any element of the crime charged, then you must return a verdict of acquittal. You may not return a guilty verdict simply because you feel that it is more likely than not that a defendant committed the crime charged. A guilty verdict is only appropriate if each and every one of you is satisfied that a defendant's guilt has been proved beyond a reasonable doubt.

The fact that the Government is a party here, that the prosecution is brought in the name of the United

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2 States of America, entitles it to no greater consideration
3 than that accorded to any other party to the litigation.
4 By the same token, it is entitled to no less considera-
5 tion. This case should be considered and decided by
6 you as an action between persons of equal standing in the
7 community. All persons stand equal before the law and
8 are to be dealt with as equals in a court of justice.

9 The indictment names thirteen defendants.
10 Only nine of these defendants are on trial before you.
11 They are: Lawrence Centore, Peter VAriano, James Ostrander,
12 John Monaco, Michael Picciano, Michael DeMichaels,
13 Anthony Russillo, Alfonso Coletti and Henry Bucci.

14 These are the only persons whose guilt or in-
15 nocence you must announce in your verdict. In the
16 determination of innocence or guilt you must bear in
17 mind that guilt is personal. The guilt of a defendant or
18 innocence of the defendants on trial before you must be
19 determined separately with respect to each of them,
20 solely on the evidence or lack of evidence as to them.

21 Let me return to the -- turn to the indictment
22 and read that which is before you.

23 The only count, as you know, that you are
24 concerned with is Count 2, and it reads as follows:
25

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A, The Grand Jury further charges from on or about April 15, 1971, and continuously thereafter, up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, Lawrence Centore, also Michael Yannicelli -- I am sorry, Michael Centore, also known as Larry Black, Michael Yannicelli, Peter Variano, Michael Evangelista, William Murty, James Ostrander, John Monaco, Michael Picciano, Michael DeMichaels, Frank Galella, Anthony Russillo, Alfonso Coletti and Henry Bucci, the defendants, unlawfully, wilfully and knowingly did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit: A sports betting and mutual race horse policy business," being in violation of the laws of the State of New York, to wit: New York State Penal Law, Section 22505 and 22510; B, involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business; and, C, remaining substantially in continuous operation for a period in excess of thirty days, and having a gross revenue of \$2,000 in a single day.

The charge relates to a violation of the Federal Gambling Laws, Title 18, United States Code,

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Section 1955.

Section 1955 provides in pertinent part as follows:

A, whoever conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling business shall be guilty of an offense. B, as used in this section, illegal gambling business means a gambling business which, one, is in violation of the law of the State in which it is conducted is; two, involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such businesses, and, three, has been or remains in substantially continuous operation for a period in excess of thirty days, or has a gross revenue of \$2,000 in a single day.

The second paragraph, gambling includes, but is not limited to conducting policies or numbers games.

Since the federal law defines in part an illegal gambling business as one which is in violation of the law of the State in which it is conducted, we necessarily turn to the law of the State of New York. The Penal Law of the State of New York, Section 225, contains the following definition:

2, Gambling. A person engages in gambling when he stakes or risks something of value upon the

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2 outcome of a contest of chance, or a future contingent
3 event not under his control or influence, upon an agreement
4 or understanding that he will receive something of value
5 in the event of a certain outcome.

6 3, Player means a person who engages in any
7 form of gambling solely as a contestant or bettor without
8 receiving or becoming entitled to receive any profit
9 therefrom other than personal gambling winnings and without
10 otherwise rendering any material assistance to the es-
11 tablishment, conduct or operation of the particular
12 gambling activity.

13 Paragraph 4. Advance gambling activity. A
14 person advances gambling activity when acting other than
15 as a player, he engages in conduct which materially aids
16 any form of a gambling activity.

17 Paragraph 5, Profit from gambling activity.
18 A person profits from gambling activity when other than
19 as a player he accepts or receives money or other property
20 pursuant to agreement or understanding with any person
21 whereby he participates or is to participate in the pro-
22 ceeds of the gambling activity. Or, two, policy, or the
23 numbers game, means a form of lottery in which the winning
24 chances or plays are not determined upon the basis of a
25 drawing or other act on the part of persons conducting or

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2 connected with the scheme, but upon the basis of the out-
3 come or outcomes of a future contingent event or events
4 otherwise unrelated to the particular scheme.

5 With these definitions in mind, I now turn to
6 the specific sections of the New York State Penal Law which
7 the indictment charges were violated.

8 Section 225.10 provides in pertinent part, and
9 I quote, that "A person is guilty of promoting gambling
10 when he knowingly advances or profits from the unlawful
11 gambling activity by receiving in connection with a policy
12 scheme or enterprise (a), money or written records from
13 a person other than a player whose chances or plays are
14 represented by such money or records, or, (b) receiving
15 more than \$500 in any one day of money played in such
16 scheme or enterprise."

17 Under this section, one clause provides that
18 New York Law will be violated if a person, in connection
19 with a policy or numbers game, receives from anybody who
20 is not a player money or records showing chances or plays.
21 Under this clause it is the source of money or records
22 that is the key, and no particular number of bets nor any
23 particular amount of money need be shown. Another clause
24 provides that New York Law will be violated if a person,
25 in connection with a policy or numbers game, receives

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2 more than \$500 in bets in one day.

3 Under this clause it is the amount of money
4 that is the key without regard to the number of the bets
5 or the source of the money or records.

6 Section 225.05 provides that a person is guilty
7 of promoting gambling in the second degree when he know-
8 ingly advances or profits from unlawful gambling activity.
9 I have already defined advances or profits from unlawful
10 gambling activity for you. Under this section is is suf-
11 ficient if you find beyond a reasonable doubt that a de-
12 fendant's conduct comes within those definitions, without
13 regard to the number of bets, the amount of money involved
14 or the source of the bets or the money.

15 I have now read to you the pertinent parts
16 of the New York Law which the Government alleges that
17 the defendants have violated. I instruct you further that
18 it is not necessary for you to find that there was a
19 violation of all these sections. It would be enough to find
20 beyond a reasonable doubt that a defendant violated any
21 one of these sections of the State Law in conducting a
22 gambling business as charged.

23 To recapitulate: The indictment alleges that
24 the defendants conducted an illegal gambling business in
25 violation of federal law. To establish this, the first

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2 element that the Government must prove beyond a reasonable
3 doubt is that the illegal gambling was conducted in viola-
4 tion of New York State Law. If you are convinced beyond
5 a reasonable doubt that a defendant committed any one of
6 the following violations then the Government would have met
7 its burden in proving the first element as to that defendant.

8 One, if you find that the defendant knowingly
9 advanced or profited from gambling activity by either
10 receiving records or money from someone other than a
11 player, or by receiving more than five hundred dollars
12 numbers bets on one day, then it would be a violation of
13 Section 225.10.

14 Two, if you find that a defendant knowingly
15 advanced or profited from gambling activity, as I have
16 defined those terms to you, without regard to the amount
17 of money, the number of bets or source of either one, if
18 you find that it is a violation of Section 225.05.

19 I stress that the defendants here are not
20 charged with a violation of New York State Law. It comes
21 into play only as a part of the crime charged against
22 them under the Federal law, the essential elements of
23 which I shall define for you now.

24 Now, against this background of the applicable
25 Federal and State laws we turn to a consideration of the

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2 charge contained in the indictment. In order to sustain
3 the charge under this indictment against a defendant
4 on trial, the Government must establish as to him beyond
5 a reasonable doubt that a gambling business was conducted
6 in the Southern District of New York.

7 I charge you that the Southern District of
8 New York includes Bronx County and North Tarrytown, Yonkers,
9 Hastings-on-Hudson, Tuckahoe, Eastchester, and lower New
10 Rochelle, all in Westchester County.

11 Two, that such gambling business was in violation
12 of the laws of the State of New York. I have already
13 instructed you that a person violates New York State
14 law, when he advances gambling activities by unlawfully
15 accepting bets from members of the public as a business
16 rather than in a casual or personal fashion, upon the
17 outcomes of future contingent events, and also that a person
18 violates the State law when he either knowingly advances
19 or profits from such unlawful gambling activity.

20 You should remember that I explained to you a
21 moment ago three ways in which New York gambling laws
22 could be violated. One of these required a return of \$500
23 in money from gambling. The other two did not require
24 particular amounts.

25 It is important to keep in mind that a violation

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2 of New York law only serves to trigger the Federal gambling
3 law. All the requirements of the Federal gambling law
4 must be met before you can convict a defendant. In this
5 regard the next element requires that such gambling busi-
6 ness was in substantially continuous operation for a period
7 in excess of 30 days, or has gross revenue of \$2,000 in
8 a single day.

9 The Government is not required to prove both
10 parts of the third element. It is sufficient if it proves
11 one or the other.

12 Now, the term "business" is to be given its
13 normal accepted meaning and is to be determined from all
14 the circumstances of the case, including, among other
15 matters, the volume of the activity, its scope and size.
16 As a general rule, a business enterprise involves a con-
17 tinuous course of conduct rather than a single isolated
18 transaction.

19 As to the alternative part of the third element,
20 if you find that bets placed with the alleged gambling
21 enterprise in any single day totalled at least \$2,000,
22 that is sufficient upon which to find that the business
23 had a gross income in that amount on that day.

24 I instructed you during the trial that if in
25 fact you find there was an illegal gambling business, then

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2 it does not matter whether the operation made a profit or
3 lost money.

4 Four, the next element is that five or more
5 persons were involved in a gambling operation in that they
6 conducted, financed, managed, supervised, directed or
7 owned all or part of such business. I shall presently
8 define those terms for you.

9 The words "conducts", "finances", "manages",
10 "supervises", "directs" or "owns", are used in their or-
11 dinary sense or meaning. Thus, to conduct means to act or
12 carry on or to play a role in furthering enterprise, if
13 one is so engaged, the extent of his role does not matter.
14 To conduct would not include one who participates as a
15 mere bettor, who is only entitled to winnings on his bets
16 and otherwise does not profit from a particular gambling
17 business.

18 Finance means to make funds available.

19 Manage, supervise, direct or own readily define
20 themselves.

21 The next and final element is that the defendant
22 knowingly, wilfully and intentionally conducted, financed,
23 managed, supervised, directed, or owned all or part of
24 such an illegal gambling business or caused any of such
25 acts to be performed.

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2 Knowledge, wilfulness and intent exist in the
3 mind and since it is not possible to look into a man's
4 mind to see what went on, the only way you have at arriving
5 at a decision on these questions is for you to take into
6 consideration all the facts and circumstances shown by the
7 evidence, including the exhibits, and to determine from
8 all such facts and circumstances whether the requisite
9 knowledge, wilfullness and intent were present at the
10 time in question.

11 An act is wilful if it is done knowingly,
12 deliberately and with an evil purpose. An act is not done
13 wilfully if it is done as a result of mistake, careless-
14 ness, lack of evil purpose or for some other innocent
15 reason. It is not necessary for you to find that a de-
16 fendant knew he was breaking a particular law, and whether
17 or not an act is knowing or wilful has nothing to do with
18 what a person's private reasons for committing the act,
19 so long as the act is done with an evil purpose.

20 A defendant may be found guilty of the crime
21 charged here if he has aided or abetted the commission
22 of the crime in violation of Title 18, United States Code;
23 Section 2. This provides that whoever commits an offense
24 against the United States, or aids, abets, counsels,
25 commands, induces or procures its commission, is punishable

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2 as a principal.

3 Whoever wilfully causes an act to be done which,
4 if directly performed by him or another, would be an
5 offense against the United States, is punishable as a
6 principal.

7 Thus, a person who aids or abets another to
8 commit an offense is just as guilty of that offense as he
9 would be had he committed it himself.

10 Before you can conclude that a person aided
11 or abetted you must first find that the substantive crime
12 charged in this case, conducting an illegal gambling
13 business, was in fact, committed. Secondly, you must
14 determine that the defendant in some way knowingly and
15 intentionally associated himself with the criminal venture,
16 that he participated in it as something he wished to bring
17 about and that by his actions he tried to make the crime
18 succeed. You must find more than the defendant's mere
19 presence during or knowledge of the offense.

20 In other words, if one, fully aware of what he
21 is doing, plays a significant role in furthering and fa-
22 cilitating an act prohibited by law, he is equally as
23 guilty as the person who actually and physically performs
24 the act or acts, even though the latter played a greater
25 part in the perpetration of the crime. Accordingly, you

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2 may find one defendant guilty of the offense as charged
3 in Count Two, if you find beyond a reasonable doubt that
4 any of the named defendants committed the offenses with
5 which they are charged in that count, and that that first
6 defendant aided and abetted him.

7 I will now address myself to more general con-
8 siderations which you must bear in mind during your de-
9 liberations. First, I must emphasize again that there
10 are nine defendants on trial, and you must consider
11 separately whether the defendants charged have been proved
12 -- whether the offense charged has been proved guilty
13 beyond a reasonable doubt.

14 It is your duty to give separate, personal
15 consideration to the case of each defendant. When you
16 do so, you should analyze what evidence in the case shows
17 with respect to that individual, leaving out of considera-
18 tion entirely any evidence admitted solely with regard
19 to other defendants. Each defendant is entitled to have
20 his case determined from the evidence as to his own acts
21 and statements and conduct, and any other evidence in the
22 case which may be applicable to him.

23 Now, during the course of this trial you have
24 heard tape recordings of various conversations as well as
25 other evidence involving one or more of the defendants

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2 but not the others. Bear in mind that you can only con-
3 sider statements in those conversations against the people
4 actually speaking or otherwise involved and not against
5 any other defendant. And in respect to any other evidence,
6 that can be used only against the defendant it actually
7 involves or the defendant to whom it is directly
8 connected.

9 Therefore, that you find one or more of the
10 accused guilty or not guilty should not influence your
11 verdict with respect to the other defendants.

12 Now, the defendants in this case have not taken
13 the stand to testify. As I told you before, the Govern-
14 ment has the burden of proving the charges against each
15 defendant beyond a reasonable doubt. A defendant does
16 not have to prove his innocence. A defendant has the
17 right to remain silent. He does not have to testify or
18 present any evidence in his own behalf, and you may not
19 draw any inference or conclusion or form any prejudice
20 because a defendant did not testify and present evidence.

21 Under your oath as jurors you cannot allow
22 consideration of the punishment which may be inflicted
23 upon a defendant if he is convicted to influence your
24 verdict in any way, or in any sense enter into your
25 deliberations. The duty of imposing sentence rests

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2 exclusively upon the Court. Your function is to weigh the
3 evidence in the case and to determine the guilt or inno-
4 cence of a defendant solely upon the basis of such evidence
5 and the law.

6 You are to decide the case upon the evidence
7 and the evidence alone, and you must not be influenced
8 by an assumption, conjecture or sympathy or any inference
9 not warranted by the facts. If you fail to find beyond
10 a reasonable doubt that the law has been violated, you
11 should not hesitate for any reason to find a verdict
12 of acquittal. But, on the other hand, if you should find
13 that the law has been violated as charged, you should
14 not hesitate because of sympathy or any other reason to
15 render a verdict of guilty.

16 I would like to point out that you should not
17 enter the jury room with any preconceived pride of opinion.
18 You should not be unwilling to be convinced by intelligent
19 argument with your fellow jurors. Each juror has to answer
20 to his or her own conscience and each has to decide this
21 case for himself or herself, but in so doing you should
22 be willing to consider the views of the other jurors and
23 to talk things out and try your best to reach a unanimous
24 agreement.

25 Your verdict must be one with which each juror

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2 agrees.

3 If during your deliberations, you deem it
4 necessary to have a copy of the indictment or desire any
5 of the exhibits, they will be sent in to you on request.

6 If you wish any portion of the testimony read,
7 any of the tapes to be played, or the Court's charge re-
8 read, that will be done.

9 Let me just say in that connection, I think
10 each counsel summarized in his summation and suggested
11 that you have certain portions of the testimony reread.
12 Let me suggest that what you do is to exhaust your col-
13 lective recollection first. Go through that process.
14 Obviously, if you want any of the tapes replayed, if you
15 want any of the testimony re-read, that will be done. But
16 let me suggest that you exhaust, each of you, your col-
17 lective recollection before doing that.

18 In conclusion, let me say that this is an
19 important case. Every criminal case is important. It
20 is important to the Government and it is important to the
21 defendants.

22 It is your obligation to decide the case on
23 the evidence and on the law as I have charged it to you.
24 I give the case to you with the confidence that you will
25 do just that.

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2 I will give to the Foreman a sheet as you go
3 out which lists each of the defendants by name with a
4 column entitled, "Not guilty", which I think will aid
5 you in recording your decision.

6 Now, ladies and gentlemen, the process now is
7 for me to confer with counsel, who will have an opportunity
8 to raise any objections they have to the charge I have
9 given to you and point out any errors I may have made
10 and so forth. After that is over I will give the case to
11 you.

12 [In the robing room:]

13 MR. BRODERICK: I have no objection to the
14 charge at all.

15 THE COURT: Let me go one by one. Mr. Lanna?

16 MR. LANNA: I have no exceptions.

17 THE COURT: Mr. Broderick?

18 MR. BRODERICK: I have no exceptions.

19 THE COURT: Mr. Bellantoni?

20 MR. BELLANTONI: No exceptions.

21 THE COURT: Mr. Hartman?

22 MR. HARTMAN: No exceptions.

23 THE COURT: Mr. Lessa?

24 MR. LESSA: No exceptions.

25 THE COURT: Mr. Katcher?

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2 MR. KATCHER: None, sir.

3 THE COURT: Mr. Mitchell?

4 MR. MITCHELL: None, your Honor.

5 THE COURT: Mr. Panzer?

6 MR. PANZER: No exceptions, your Honor.

7 THE COURT: Mr. Seidler?

8 MR. SEIDLER: No exceptions.

9 THE COURT: The Government can't have any.

10 [In open court:]

11 THE COURT: I want to thank you -- I am going
12 to excuse you. Your services are no longer in need. I
13 appreciate your service on the jury, and my Clerk will
14 take your phone numbers just in the event that we may
15 have some need to get in touch with you at home. You may
16 now go.

17 [Alternate jurors excused.]

18 [A marshal was sworn.]

19 [Whereupon, at 3:50 p.m. the jury retired
20 to commence deliberations.]

21 THE COURT: I would like to get an agreement
22 from all counsel. I am going up to chambers now and I
23 would like to get an agreement that if the jury wants an
24 exhibit that all of you, with Mr. Abzug, agree upon that
25 and send it in without the necessity of my coming back

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2 downstairs. If you have a dispute, obviously I will come
3 down to resolve it. But I would like to get your agreement
4 on the record on that procedure.

5 MR. ABZUG: No opposition from the Government,
6 your Honor.

7 MR. LANNA: I have no opposition.

8 MR. BRODERICK: No opposition.

9 MR. BELLANTONI: Defendant consents and
10 has no opposition.

11 MR. HARTMAN: So agreed.

12 MR. LESSA: Agreed.

13 MR. KATCHER: Agreed.

14 MR. MITCHELL: On behalf of Picciano, yes.

15 MR. PANZER: Yes, Judge.

16 MR. SEIDLER: Defendant Russillo agrees.

17 MR. PANZER: If we do agree, we will just send
18 the exhibit in. There will be no need for your Honor to
19 come down. Only if we --

20 THE COURT: If you have a dispute, obviously
21 I will have to resolve it. All right. I do want to say
22 before I go that I want to congratulate all of you on your
23 summations. I think they were succinct, to the point,
24 well organized, and since I had to listen to all of them
25 and did not participate, it was a relief to have it that way.

[Recess.]

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(Note from jury at 4:25 p.m.)

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(Jury note marked Court's Exhibit 1 for Identification.)

(In open court - jury not present)

THE COURT: We have a note from the jury which I guess all the defendants' counsel have read. "Of the five or more who have to be involved, can it be one defendant related to four others, or not defendants or co-indicted."

The answer is obviously yes. I don't understand why we were brought down for that. The answer is obviously yes, and I am sending a note in to the jury to that effect.

All right, we will wait for the next one.

(Recess)

(Note from jury received at 5:15 p.m.)

xx

(Jury note marked Court's Exhibit 2 for Identification.)

(In open court - jury not present.)

THE COURT: I again think that you know what the question that has been asked is, and I gather that there is some problem about it. "By conduct, finance, manage, supervise, direct and own a part of said illegal gambling business." The jury asks, "Does the law include in this definition people who have different levels of responsibility in the business?"

1 cmds 234

2 My charge indicated clearly that was so. "Is
3 that included under the definition" and the answer is, of
4 course. I don't really understand why they can be in
5 dispute about that. I'm going to instruct them as to what
6 it is and get on the record anything you want to say right
7 now.

8 MR. BRODERICK: I personally take exception to
9 the fact that it is a runner part of the operation.

10 THE COURT: All right.

11 MR. BRODERICK: All right. I mean, I'm just
12 familiar with the Becker case, I'm very familiar with it.
13 The concept of the runner was argued to the jury. There
14 was no charge as a matter of law and we are charging this
15 jury now as a matter of law that a runner is part of this
16 operation.

17 THE COURT: "Does the law include in this defini-
18 tion people at different levels, and is a runner included
19 under this definition?" The answer is, of course a runner
20 is included under this definition.

21 MR. BRODERICK: What I'm asking the Court to do
22 is charge them and say that it's not just the fact of being
23 a runner. The term runner they must consider the evidence.

B95 24 THE COURT: All right. Get the jury.

25 MR. BRODERICK: Your Honor, before the jury gets

1 cmds 235

2 here could you just reread your charge to the jury on that
3 point, and that would be very satisfactory to me, instead
4 of answering that question?

5 THE COURT: I am going to answer the question.

6 (Jury enters the courtroom.)

7 THE COURT: All right, everybody is here.

8 Ladies and gentlemen, you sent me a note, "By
9 conduct, finance, manage, supervise, direct and own" is mis-
10 spelled in the indictment as W-O-N, it is supposed to be
11 O-W-N, "a part of said illegal gambling business, does the
12 law include in its definition people at different levels
13 of responsibility in the business, and is a runner included
14 under this definition?"

15 Let me reread again my charge on the subject.

16 "The words conduct, finance, manage, supervise
17 and direct or own are used in their ordinary sense. Thus
18 to conduct means to act or carry on or play a role in further-
19 ing an enterprise.

20 "If one is so engaged the extent of his role
21 does not matter. To conduct would not include one who
22 participates as a mere bettor. He is only entitled to
23 winnings on his bets and otherwise does not profit from the
24 particular gambling.

25 "Financing is to make funds available, manage,

1 cmds 236

2 supervise, direct are already defined in themselves. The
3 term conduct refers to both to the high level bosses and
4 street level employees. It does not include the player in
5 the operation. Nor one who, as I said, merely participates
6 in it by placing bets.

7 "Those who participate in the operation of a
8 gambling business, regardless of how minor their role and
9 whether or not they be labeled agents, runners, independent
10 contractors or the like, are included in the term conduct,
11 manage, and what is excluded are the customers of the
12 business. And I want to emphasize as I understand conduct,
13 the term as I have defined it for you and the issue for you
14 to determine is whether the person is one you are consider-
15 ing who is actually engaged in the operation of the business,
16 no matter what you call it."

17 That is what is involved. All right.

18 (Recess)

19 (In open court - jury not present)

20 THE COURT: As I think I've told you, I am going
21 to let the jury go home and return at 9:30 tomorrow. I have
22 a hard time with that also, not in terms of getting up, but
23 in terms of getting out of the house. So we will both
24 struggle.

25 MR. HARTMAN: Yes, sir.

1 cmds 237

2 (Jury enters courtroom)

3 THE COURT: Ladies and gentlemen, I assume that
4 you are still deliberating and have not reached any con-
5 clusion, and it has been a long day and I have made no
6 arrangements to, you know, sequester you or anything like
7 that. I just don't think it is necessary.

8 What I am going to do is to allow you to go
9 home now and you understand that you are under my admonition
10 now that you obviously can discuss this matter, but I want
11 you to go home now and obviously think about what you have
12 been doing and keeping it to yourselves and return to the
13 jury room tomorrow morning at 9:30 and resume your delibera-
14 tions. So you can leave all your notes and everything like
15 that, your papers in there and you can go home now and
16 return at 9:30 in the morning and try to be as prompt as
17 you have been in the past.

18 All right, thank you. Good night.

19 (Jury leaves.)

20 THE COURT: Now, gentlemen and ladies, you are
21 free to go as well.

22 (Adjournment taken until May 7, 1976 at
23 9:30 a.m.)

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Pages missing because of missing notes.

May 7, 1976

JUDGMENTS AND COMMITMENT ORDERS
APPEALED FROM

DEFENDANT Peter Vassano 104 S. 76 Cr. 377 RJ
DOCKET NO. 7 8

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date 7 8

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant
have counsel appointed by the court and the defendant thereupon waived assistance of counsel
☒ WITH COUNSEL PATRICK F. BRODERICK ESQ
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

There being a ~~plea~~/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY on count 2

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and know
did conduct, finance, manage, supervise, direct, and own an illeg
gambling business, to wit, a sports betting and mutual race horse.
(a) being in violation of the laws of the State of New York, Ncy Y
Penal Law, Sections 225.05 and 225.10. (b) involving five or more
who conduct, finance, manage, supervise, direct and own a part of
illegal gambling business, and remaining in substantially continu
operation for a period in excess of 30 days, and having a gross re
of two thousand dollars a day. (Title 18, U.S. Code, Sections 1955 &
The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The
hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THE
YEARS on count 2. The defendant is fined \$20,000 dollars to be
or the defendant is to stand committed. Bail Pending Appeal is
at \$10,000 Personal Recognizance Bond.

SENTENCE
OR
PROBATION
ORDER

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

COMMITMENT
RECOMMEN-
DATION

DOCKETED AS
A JUDGMENT # 76 649
ON July 12, 1976

MICROFILM
JUL 12 1976

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation
reversal of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of prob
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warn
probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

Robert L. Carter
ROBERT L. CARTER

Date July 8, 1976

It is ordered that the Cl
a certified copy of this
and commitment to the
shall or other qualified o

FILED
JUL 8 1976
S. D. OF N.Y.

BEST COPY AVAILABLE

JUDGMENTS AND COMMITMENT ORDERS
APPEALED FROM

Southern Dist. of N.Y.

DEFENDANT Michael Evangelista DOCKET NO. S. 76 Cr. 377

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date 7 MONTH 8 DAY 76 YEAR

COUNSEL ☐ WITHOUT-COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL PAUL A. VICTOR ESQ
(Name of counsel)

PLEA ☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, to count 2 only. ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct, and own an illegal gambling business, to wit, a sports betting and mutual race horse policy (a) being in violation of the laws of the State of New York, New York Penal Law, Sections 225.05 and 225.10. (b) involving five or more persons who conduct, finance, manage, supervise, direct and won a part of said illegal gambling business, and remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of two thousand dollars a day. (Title 18, U.S. Code, Sections 1955 & 2). The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR on count 2, and on the condition that the defendant be confined in a jail type institution for a period of THIRTY(30) DAYS, the execution of the remainder of the sentence of imprisonment is hereby suspended. Bail Pending Appeal is fixed at \$10,000 Personal Recognizance Bond. On defendant counsel's motion count 1 is dismissed with the consent of the Government.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this page, and by Section 160.50, of the Criminal Justice Law of 1973, shall apply to the defendant during the probation period. The court further orders that the defendant shall not be permitted to leave the State of New York during the probation period. If the defendant violates any of the conditions of probation, the court may issue a warrant and revoke the probation and commit the defendant to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years permitted by law.

COMMITMENT RECOMMENDATION The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY ☒ U.S. District Judge Robert L. Carter
☐ U.S. Magistrate

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT
FILED
JUL 8 1976
S.D. OF N.Y.

27 Date July 8, 1976

CEPL:GANT

DOCKET NO. ➤ S. 76 Cr. 377 R.L.C

[illegible]

In the presence of the attorney for the government
the defendant appeared in person on this date —

| MONTH | DAY |
|-------|-----|
| 7 | 8 |

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL

ARMAND LESSER ESQ.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.

☐ NOLO CONTENDERE.

X NOT GUILTY

There being a Rating/verdict of

☐ NOT GUILTY. Defendant is discharged

X ³¹ GUILTY, on count 2

FINDING & JUDGMENT

FINDING & JUDGMENT: Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and knowingly did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse pool (a) being in violation of the laws of the State of New York, New York Penal Law, Sections 225.05 and 225.10. (b) involving five or more persons said illegal gambling business, and remaining in substantially continuous operation for a period in excess of 30 days, and having a revenue of two thousand dollars a day. (Title 18, United States Code Sections 1955 & 2)

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant be committed to the custody of the Attorney General or his authorized representative for the imprisonment for a period of THIRTY DAYS on count 2. The defendant is placed on probation for a period of ONE(1)YEAR, subject to the standing probation order of this Court. Bail Pending Appeal is fixed at \$10,000 dollar Personal Recognizance Bond.

SENTENCE
OR
PROBATION
ORDER

**SPECIAL
CONDITIONS
OF
PROBATION**

MICROFILM

JUL 12 1976

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set reverse side of this judgment be imposed. The Court may change the condition of probation, reduce or extend the period of probation any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant of probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk
a certified copy of this
and commitment to the
shall or other qualified off

SIGNED BY
X U.S. District Judge

☐ U.S. Magistrate

ROBERT L. CARTER

Date July 8, 1976

A-111

JUDGMENTS AND COMMITMENT ORDERS
APPEALED FROM

DEFENDANT Anthony Russell Sethon Butler of NY

DOCKET NO. S.76 Cr.377 R.L.C.

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date 7 MONTH 8 DAY

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant
have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL BERNARD ALAN SEIDLER ESQ
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY on count 2.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and knowingly did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse p (a) being in violation of the laws of the State of New York, New York Penal law, Sections 225.05. and 225.10. (b) involving five or more of said illegal gambling business, and maintaining in substantially continuous operation for a period in excess of 30 days, and having revenue of two thousand dollars a day. (Title 18, United States Code Sections 1955 & 2).

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on count 2, and on the condition that the defendant be confined to a jail type institution for a period of FIVE (5) MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of NINETEEN (19) MONTHS subject to the standing probation order of this Court. Bail Pending Appeal is fixed at \$10,000 Personal Recognizance Bond. Pursuant Title 18, United States Code, Section 3651.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

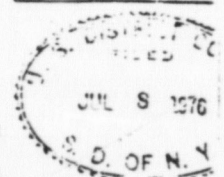
COMMITMENT RECOMMENDATION

SIGNED BY Robert L. Carter
☒ U.S. District Judge
☐ U.S. Magistrate

ROBERT L. CARTER

Date July 8, 1976

It is ordered that the Clerk
a certified copy of this judgment
and commitment to the U.S.
Marshal or other qualified official



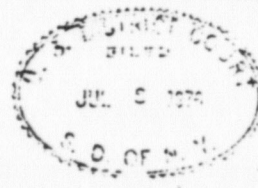
JUDGMENTS AND COMMITMENT ORDERS APPEALED FROM

| | | | | | |
|---|--|--|------------|----------------------|------|
| DEFENDANT | HENRY SUGOI | | DOCKET NO. | S. 76 Cr. 377 R.L.C. | |
| JUDGMENT AND PROBATION/COMMITMENT ORDER | | | | | |
| | In the presence of the attorney for the government the defendant appeared in person on this date | | MONTH | DAY | YEAR |
| | | | 7 | 8 | 76 |
| COUNSEL | <input type="checkbox"/> WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel. <input checked="" type="checkbox"/> WITH COUNSEL <u>JOVING KATCHER ESQ.</u> (Name of counsel) | | | | |
| PLEA | <input type="checkbox"/> GUILTY; and the court being satisfied that there is a factual basis for the plea, <input type="checkbox"/> UNDO CONTENDERE, <input checked="" type="checkbox"/> NOT GUILTY | | | | |
| | There being a <u>TRIAL</u> /verdict of <input type="checkbox"/> NOT GUILTY. Defendant is discharged. <input checked="" type="checkbox"/> GUILTY on count 2. | | | | |
| FINDING & JUDGMENT | Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual horse race policy (a) being in violation of the laws of the State of New York, New York Penal law, Sections 225.05. and 225.10. (b) involving five or more persons of said illegal gambling business, and remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of tow thousand dollars a day. (Title 18, United States Code, Sections 1955 & 2). The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2) YEARS on count 2, execution of sentence is suspended, and the defendant is placed on probation for a period of TWO(2) YEARS, subject to the standing probation order of this Court. Bail Pending Appeal is fixed at \$10,000 Personal Recognizance Bond. | | | | |
| SENTENCE OR PROBATION ORDER | | | | | |
| SPECIAL CONDITIONS OF PROBATION | | | | | |
| ADDITIONAL CONDITIONS OF PROBATION | In addition to the special conditions of probation set out above, it is hereby ordered that the general conditions of probation set out on the back of this judgment and commitment order. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period, if it is deemed necessary, may issue a warrant and revoke probation for violation occurring during the probation period. | | | | |
| COMMITMENT RECOMMENDATION | The court orders commitment to the custody of the Attorney General and recommends, | | | | |
| | It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer. | | | | |

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

ROBERT L. CARTER

Date July 8, 1976



STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT LA GRASSA, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 62-20 60th RD
MASPETH, N.Y.

That on the 27 day of SEPTEMBER, 1976,
deponent personally served the within JOINT APPENDIX

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

~~By leaving~~ true copies of same with a duly
authorized person at their designated office.

By depositing 1 true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

1. PAUL A. VICTOR, ESQ.
ATTORNEY FOR DEFENDANT-APPELLANT
EVANGELISTA
67 WALL ST.
NEW YORK, N.Y. 10005
2. EDWARD PANZER, ESQ.
ATTORNEY FOR DEFENDANT-APPELLANT
DE MICHAELS
299 BROADWAY - SUITE 605
NEW YORK, N.Y. 10007

3. BERNARD ALAN SEIDLER, ESQ.
ATTORNEY FOR DEFENDANT-APPELLANT
RUSSELL
401 BROADWAY
NEW YORK, N.Y. 10013
4. PAUL J. CURRAN
UNITED STATES ATTORNEY
U.S. COURTHOUSE
FOLEY SQUARE
NEW YORK, N.Y.
ATTORNEY FOR APPELLEE

Robert La Grassa

Sworn to before me this

27th day of September, 1976

Michael DeSantis
MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission expires March 30, 1978

